

Warren Havens

Thursday, July 14, 2016

To: FCC Office of the Secretary

Attn: The Commission
The Chief, Wireless Bureau

Filed: On ECFS in dockets 11-71 and 13-85

This is an informational filing, updating matters previously presented by various persons. No relief is requested herein. This is not a “presentation” under ex parte rules.¹ If, pursuant to the information provided herein, I later submit a request for relief, I will serve a copy on that request to any party or parties in interest. I expect to submit request for relief in the near future in accord with the court decisions described herein.

California Court Receivership Order (“RO”) modification of June 30, 2016.

Attached as Exhibit 1 is the transcript of this public hearing in which the Court modified aspects of the RO regarding my individual rights.² I place margin bars on the side of relevant text. The Court earlier modified the RO several times and I assume the Receiver provided those amendments to the FCC. I provide the attached since it pertains to my individual rights to communicate with the FCC. I do not express herein views regarding the Court’s decisions shown in the exhibit, except to agree that I have, and always had, rights indicated in this decision to address the FCC for my interests and public interests.³

Delaware Bankruptcy Court decision of Monday July 11, 2016.

Attached as Exhibit 2 is the transcript of this public hearing. The related Orders are included at the end of this Attachment. An appeal may be timely filed of the case dismissal and motion denial, and exercise of my authority rights the court described timely completed.⁴ I place margin bars on the side of relevant text that refer to my authority rights, and associated rights of Skybridge to bankruptcy. I do not express herein views regarding the Court’s decisions in this exhibit, except to agree that I have, and always had,

¹ If any FCC staff person finds otherwise and informs me, I will serve a copy of this as instructed.

² I understand that the Order resulting from the relevant part of this hearing, marked in the exhibit, is not yet entered.

³ Valid exercise of “speech” and “petition” rights before the FCC under the Communications Act involves public interests, along with party interests.

⁴ If filed, the FCC will be served a copy, since the FCC is a party for several reasons indicated in the Schedules of the bankruptcy case.

the rights and “authority” indicated in this decision as the Member and Director of Skybridge, and that a State Court or agent thereof cannot bar rights to protection under the Federal bankruptcy system, including (and especially) rights of a nonprofit charity.

Respectfully,

/s/

Warren Havens
2649 Benvenue Ave.
Berkeley, CA 94704

July 14, 2016

Declaration

I declare under penalty of perjury that the facts above are true and correct.

/s/

Warren Havens

July 14, 2016

EXHIBIT 1

CERTIFIED TRANSCRIPT OF:

Leong vs. Havens

HEARING

Date: June 30, 2016

Reported by: Joan Martin



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<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 COUNTY OF ALAMEDA 3 UNLIMITED JURISDICTION 4 5 ARNOLD LEONG, 6 Plaintiff, 7 vs. No. 2002-070640 8 WARREN HAVENS, also known 9 as, eitt lif koma nu 10 gridastadr, an individual, 11 ENVIRONMENTAL LLC., et al., 12 Defendants. 13 14 REPORTER'S TRANSCRIPT 15 OF PROCEEDINGS 16 MOTIONS HEARINGS 17 Thursday, June 30, 2016 18 BEFORE HONORABLE FRANK ROESCH 19 DEPARTMENT 24 20 21 Alameda Superior Court 22 1221 Oak Street 23 Oakland, California 24 25 REPORTED BY: JOAN F. MARTIN, CSR #6036</p>	<p>1 Thursday, June 30, 2016 3:34 o'clock p.m. 2 ---oOo--- 3 PROCEEDINGS 4 ---oOo--- 5 THE COURT: Leong versus Havens. 6 Please have a seat. 7 Mr. Downs, state your name on the record and 8 then we'll move to your right. 9 MR. DOWNS: Good afternoon, Your Honor. Andrew 10 Downs for Defendant Warren Havens. 11 MR. DeGROOT: Good afternoon, Your Honor. David 12 DeGroot for the receiver, Susan L. Uecker, who is here 13 at counsel table with me. 14 MR. KIRSCH: Good afternoon, Your Honor. Paul 15 Kirsch representing the plaintiff, Arnold Leong. 16 THE COURT: Let's start with the first motion to 17 prohibit any and all communications by Defendant Warren 18 Havens to the FCC without the receiver's or the court's 19 express approval. 20 I've read the paperwork. Mr. DeGroot, do you 21 want to add anything to your argument in the paperwork? 22 MR. DeGROOT: No, Your Honor. I'm happy to 23 address any questions that come up. 24 THE COURT: All right. Mr. Downs, do you want to 25 add anything?</p>
Page 2	Page 4
<p>1 2 APPEARANCES 3 4 Representing Plaintiff: 5 SHOPOFF CAVALLO & KIRSCH LLP 6 BY: PAUL F. KIRSCH, Attorney at Law 7 100 Pine Street, Suite 750 8 San Francisco, California 94111 9 (415) 984-1975 10 paul@scklegal.com 11 12 Representing Defendants: 13 BULLIVANT HOUSER BAILEY PC 14 BY: ANDREW B. DOWNS, Attorney at Law 15 235 Pine Street, Suite 1500 16 San Francisco, California 94104 17 (415) 352-2716 18 andy.downs@bullivant.com 19 20 Representing the Receiver, Susan L. Uecker: 21 SHEPPARD MULLIN RICHTER & HAMPTON LLP 22 BY: DAVID A. DeGROOT, Attorney at Law 23 Four Embarcadero Center, 17th Floor 24 San Francisco, California 94111-4109 25 (415) 434-9100 ddegroot@sheppardmullin.com Also present: Susan L. Uecker, Receiver ---oOo---</p>	<p>1 MR. DOWNS: I do. And I'll try my best not to 2 rehash what was in the briefs. 3 I would simply note that the relief -- if the 4 court is -- first of all, if the court should deny the 5 motion, I think we should continue under the present 6 regime. 7 What happened during the bankruptcy, and it 8 didn't happen because of the bankruptcy -- unless the 9 bankruptcy was revived and we -- Havens' motion for 10 reconsideration as such, and which I do not have any 11 predictive powers, I think that that issue is probably 12 behind us. 13 My comment would be that if the court was 14 inclined to grant the relief, I have a number of 15 objections in terms of the order. 16 First of all, the order, the way it is 17 written, gives Mr. Leong a second veto over what Mr. 18 Havens does or does not say to the FCC. In other 19 words, if Mr. Havens comes -- 20 THE COURT: You need not argue that. 21 MR. DOWNS: Okay. Thank you. 22 THE COURT: It's -- 23 MR. DOWNS: The second -- 24 THE COURT: Mr. Havens is not going to have to ask 25 Mr. Leong for any permission to do anything. And as</p>

<p style="text-align: right;">Page 5</p> <p>1 you'll see when we get to the unredacted attorney fee 2 bills, even if we give them to the receiver, they're 3 not going to be shown to Mr. Leong either. 4 MR. DOWNS: I appreciate that, Your Honor. 5 The other point is a similar procedural one 6 along the same lines, is the proposed order gives Mr. 7 Havens three business days to object to a "No" from the 8 receiver. Given that the issue may be more 9 complicated, but can be briefed by busy lawyers in 10 three business days, I don't think that's a reasonable 11 period of time. 12 Obviously if the court grants the order and 13 the receiver says -- has said "No, nothing is happening 14 until the court says 'No, I disagree with you, 15 receiver, this is an appropriate communication.'" 16 So I think putting a three-business day 17 limitation on how long Mr. Havens has to come into this 18 court and say, "We disagree. We think this is a 19 reasonable and appropriate communication. Here is what 20 we propose to say," I think is too short. 21 THE COURT: All right. 22 MR. DeGROOT: Your Honor -- 23 THE COURT: Although you people don't seem to have 24 any problem coming in on the very next day for 25 anything.</p>	<p style="text-align: right;">Page 7</p> <p>1 Now, Mr. Leong has the same proscriptions, but 2 he doesn't seem to be wanting to -- to make any 3 communications with the FCC. But I would think it 4 equally inappropriate for Mr. Leong to communicate 5 directly to the FCC, because whatever his role is in 6 any of these companies, he's also part of this lawsuit 7 and we're not -- the receiver is the one who talks to 8 the FCC, and nobody else. All right. 9 I want to make clear to Mr. Havens that any 10 violation of the court's orders are subject to a 11 contempt of court proceeding, which may be initiated by 12 the receiver or by any other party in the case. 13 Now if Mr. Havens believes that some 14 communication, such as a filing or a declaration, then 15 Mr. Havens has to go to the receiver and ask the 16 receiver to make that communication to the FCC. And if 17 Mr. -- if the receiver declines to do so, Mr. Havens 18 can come to this court and ask the court for an 19 instruction to the receiver that she -- to compel her 20 to make that communication, or to do some other act. 21 Only that -- there is nothing new about that sort of 22 process. That's what people need to do in a 23 receivership. 24 And I don't see -- and Mr. Havens needs to 25 know that he should not make inappropriate</p>
<p style="text-align: right;">Page 6</p> <p>1 MR. DeGROOT: We wouldn't object to a change in 2 the proposed order. 3 THE COURT: Mr. Kirsch, do you have any argument 4 on this issue? 5 MR. KIRSCH: Just to add, Your Honor, that we 6 concur with the receiver's briefs, that this is 7 necessary and appropriate, unfortunately, under the 8 circumstances. 9 THE COURT: Well, the necessity is going to have 10 to -- my ruling is really as follows. The prior 11 restraint of speech is the problem for me. I think 12 it's unconstitutional. 13 Having said that, we -- this is -- there are 14 other acts that, even if they're speech, are 15 controllable because they are -- while they're 16 communications, and in this case they're business 17 communications, Mr. Havens has already been ordered to 18 not communicate with the FCC, or anybody else, as a 19 representative of any of the receivership entities. 20 I'm going to make -- clarify that order and 21 I'm going to order that Mr. Havens is to not 22 communicate with the FCC or to anybody else in a manner 23 that might lead the recipient of the communication to 24 infer that the communication from Mr. Havens may be on 25 behalf of any receivership entity.</p>	<p style="text-align: right;">Page 8</p> <p>1 communications. Because while I can't proscribe any 2 speech, as in a prior restraint manner, I will not be 3 such a nice guy when it comes down to contempt or 4 willful refusal to obey my orders. 5 Okay. Mr. DeGroot, you get to prepare a new 6 order for that. 7 MR. DeGROOT: Your Honor, one question. I don't 8 know if this -- it would be useful to include in the 9 order -- I understood your order as something where Mr. 10 Havens may still be allowed to make some communications 11 to the FCC on his own. 12 THE COURT: Well, I'll give you an example. 13 MR. DeGROOT: Sure. 14 THE COURT: He can make a Freedom of Information 15 Act request. It's on his dime, but he can do it. He's 16 -- as long as he's not representing to them that this 17 is a Freedom of Information request on behalf of 18 Skybridge or Telesarus. As long as it's -- he's doing 19 it as an individual and he's paying for that Freedom of 20 Information request himself, I don't think that that's 21 an interference with the receiver's operation of the 22 entities. 23 To submit a brief with regard to the 1171 24 proceeding, or the 1385 proceeding, or -- I think that 25 he may very well be overstepping his bounds in a very</p>

<p style="text-align: right;">Page 9</p> <p>1 large way.</p> <p>2 MR. DeGROOT: What I would ask for in terms of</p> <p>3 helping to -- one of the challenges that we face is</p> <p>4 that occasionally we get inquiries from the FCC. And</p> <p>5 that's how we've found out about some of these</p> <p>6 communications.</p> <p>7 Would it be possible, or would you consider</p> <p>8 putting in the order that Mr. Havens, for any</p> <p>9 communications that he makes with the FCC, that he</p> <p>10 provide the receiver with a copy of that simultaneously</p> <p>11 with sending it to the FCC?</p> <p>12 THE COURT: No.</p> <p>13 MR. DeGROOT: Okay.</p> <p>14 THE COURT: I don't think that would be</p> <p>15 appropriate.</p> <p>16 MR. DeGROOT: All right.</p> <p>17 THE COURT: All right. That's one.</p> <p>18 At the next one is the notice -- a motion for</p> <p>19 an order requiring the turnover of the unredacted fee</p> <p>20 bills regarding Verde, LLC.</p> <p>21 Is there anything more that you'd like to</p> <p>22 argue on this other than what was in your paperwork?</p> <p>23 MR. DeGROOT: No, Your Honor.</p> <p>24 THE COURT: Mr. Downs?</p> <p>25 MR. DOWNS: Not particularly, other than to point</p>	<p style="text-align: right;">Page 11</p> <p>1 what you mentioned earlier, that we -- we concede. We</p> <p>2 understand that the disclosure of this information is</p> <p>3 not going to be a waiver of the attorney/client</p> <p>4 privilege and we have no interest in seeing -- ever</p> <p>5 seeing these -- these bills. So I don't think that's</p> <p>6 problematic for this motion.</p> <p>7 THE COURT: Well, you won't. My order is going to</p> <p>8 be that the unredacted bills be delivered to the</p> <p>9 receiver and that the receiver -- although I think that</p> <p>10 the receiver probably doesn't need this order, but the</p> <p>11 order will include that the receiver will maintain</p> <p>12 those documents confidential from all others, including</p> <p>13 other parties to this case. And they're to be used</p> <p>14 only for the tax purposes, either prospective tax</p> <p>15 purposes on the 2015 bills or the tax audit that's</p> <p>16 ongoing for the 2011 bills.</p> <p>17 But that's -- and I also -- I actually did</p> <p>18 like some of the language that you had in your order,</p> <p>19 if I could find it here.</p> <p>20 MR. DeGROOT: Your Honor, I have -- if you need a</p> <p>21 spare of the -- the original fee bills motion or the</p> <p>22 proposed order that accompanied the ex parte.</p> <p>23 THE COURT: I've got those.</p> <p>24 MR. DeGROOT: Okay.</p> <p>25 THE COURT: If you look at your order -- first of</p>
<p style="text-align: right;">Page 10</p> <p>1 out to the court that the receiver -- the receiver's</p> <p>2 counsel has given his notice that, and in fact he gave</p> <p>3 us papers, that he's bringing an ex parte this</p> <p>4 afternoon on the same bills for Intelligent.</p> <p>5 I filed a brief on that. I did it this</p> <p>6 afternoon. But I discovered when I got here it was</p> <p>7 still out in the drop box because the runner apparently</p> <p>8 took his or her time dropping it off. So I know the</p> <p>9 court's only had my five pages of beautiful prose for</p> <p>10 about ten minutes.</p> <p>11 THE COURT: I read it.</p> <p>12 MR. DOWNS: Thank you. Impressively short.</p> <p>13 THE COURT: I read it ten minutes ago. It pretty</p> <p>14 much is what you said in the other one.</p> <p>15 MR. DOWNS: That's why I tried to not to repeat</p> <p>16 myself.</p> <p>17 THE COURT: And really, I don't see any reason not</p> <p>18 to make the same ruling in both applications, even</p> <p>19 though there hasn't been the meeting with the IRS</p> <p>20 auditor in the Telesarus situation.</p> <p>21 Is there anything you want to add to the</p> <p>22 paperwork that you filed?</p> <p>23 MR. DOWNS: No.</p> <p>24 THE COURT: What about you, Mr. Kirsch?</p> <p>25 MR. KIRSCH: Your Honor, I just want to recognize</p>	<p style="text-align: right;">Page 12</p> <p>1 all, you're going to need to make the order one that</p> <p>2 has Mr. Havens producing those directly to the</p> <p>3 receiver.</p> <p>4 MR. DeGROOT: Okay.</p> <p>5 THE COURT: I don't like the idea, at all, of Mr.</p> <p>6 Havens producing them directly to the IRS for the audit</p> <p>7 purposes. When Ms. Uecker walks into the meeting with</p> <p>8 the IRS representative, she needs to know what they</p> <p>9 said. So they're going to be delivered all to her, and</p> <p>10 she's going to deliver them to the IRS agent. All</p> <p>11 right.</p> <p>12 You can put in that the turnovers don't</p> <p>13 constitute the waiver of any privilege by Mr. Havens or</p> <p>14 the receivership entities, but in this regard I view</p> <p>15 the receivership the same as Mr. Havens, or the -- the</p> <p>16 bills are the company's bills, we are in receivership</p> <p>17 of the company. And so there's -- the identity of who</p> <p>18 those are being disclosed to isn't anybody that's not</p> <p>19 the company, so that there is no waiver of the</p> <p>20 privilege, including attorney/client privilege.</p> <p>21 And that the receiver may not use the fee</p> <p>22 bills for any purpose other than for the tax purposes.</p> <p>23 All right.</p> <p>24 And they are specifically not to be given to</p> <p>25 Mr. Leong. He may have a right to them at some future</p>

<p style="text-align: right;">Page 13</p> <p>1 point, but we're not dealing with that. This is a 2 receivership. 3 So I would like an order on that, Mr. DeGroot, 4 too, that's clean. 5 MR. DeGROOT: Yes, Your Honor. 6 THE COURT: Actually, I'm going to ask you to put 7 the -- both the ex parte application, the Telesarus 8 order and the Verde order, into one order. 9 MR. DeGROOT: Sure. 10 THE COURT: Okay. And then we're on to the sale 11 of the licenses. 12 The motion here is a motion for instructions 13 regarding the AMTS spectrum licenses with renewal 14 deadlines before or during 2016. 15 Is there -- I have some questions, but first 16 I'm going to give you an opportunity to supplement what 17 you've already written, Mr. DeGroot. 18 MR. DeGROOT: Your Honor, I'm happy to just answer 19 your questions. 20 THE COURT: All right. Is there anything you want 21 to add? 22 MR. DOWNS: There are. And I don't know whether 23 they'll be covered by your questions or not, so I'll 24 leave it to the court whether it wants to ask questions 25 first and have me go afterwards, or go the other way</p>	<p style="text-align: right;">Page 15</p> <p>1 THE COURT: Give me an example. Is this because 2 some of the licenses weren't actually cleared until 3 2013 or -- 4 MR. DOWNS: Well -- 5 THE COURT: -- something along those lines? 6 MR. DOWNS: -- it's more a question of whether or 7 not there is a build-out obligation. And our position 8 -- on the face of the licenses it shows there is no 9 build-out obligation. 10 THE COURT: Oh, I see. 11 MR. DOWNS: But to the extent there's doubt -- and 12 Mr. DeGroot, in his papers, has expressed a certain 13 degree of doubt as to whether that's correct. At least 14 that's how I interpret his papers. They can seek 15 guidance from the FCC on that issue: "Do you believe 16 -- do you agree that there is or is not a substantial 17 service obligation attached to these particular 18 licenses?" 19 The second issue is, and I think this is the 20 bigger issue, is that we have a fundamental problem 21 with the idea that's, in a practical sense -- 22 THE COURT: Here -- 23 MR. DOWNS: No, but besides -- there is a 24 fundamental problem, it's independent of Mr. Havens' 25 fundamental problem, with the idea that sale of his</p>
<p style="text-align: right;">Page 14</p> <p>1 around. I'm happy either way. 2 THE COURT: Why don't you go first. 3 MR. DOWNS: That's fine, Your Honor. 4 In addition to the argument -- and again, I'm 5 going to try not to repeat the briefs, but just to 6 reference the general points for context. 7 In addition to the argument that this simply 8 isn't necessary, I think history has shown that where a 9 receiver is controlling the licenses -- while the FCC 10 is not necessarily -- 11 THE COURT: You made that argument in your papers. 12 MR. DOWNS: Yeah. No, that it's -- it's that they 13 will get some additional time. 14 The other issue is, if there's an issue about 15 whether or not -- for example, the question about 16 whether or not there are construction deadlines on some 17 of these licenses, the receiver has an avenue to get 18 relief from the FCC to eliminate some of that 19 uncertainty, and that's to seek a formal or informal 20 declaratory ruling from the FCC on whether or not those 21 licenses have those deadlines. 22 They haven't done that. That may be their 23 strategic decision not to do it, it just may have been 24 something they overlooked. But they have that 25 opportunity.</p>	<p style="text-align: right;">Page 16</p> <p>1 licenses is going to cure the underlying problem. 2 Because the FCC has gone on record -- there is a rule 3 at 401.946(e) that the fact that a license has an issue 4 associated with it, construction build out, and its 5 obtaining service deadlines, expiration, et cetera, 6 that when the assignee takes over the license on a 7 sale, the assignee doesn't get the opportunity to come 8 back to the FCC and say, "Well, we're brand new here so 9 we'd really like some more time to do this." 10 So it's not as if selling it is suddenly a 11 magic solution that gets everybody back to position 12 where everything is nice and it's safe and it's secure. 13 In other words, they're proposing a resolution 14 which doesn't really solve the problem, other than to 15 probably lower the value of the licenses because 16 they're being sold on something akin to a fire-sale 17 basis. 18 The remaining issue I wanted to discuss, 19 simply -- and this is harkening back to something the 20 court said when we were here earlier this month. 21 It's about the tolerance for risk. I understand the 22 court's sentiments on that. 23 We're dealing with businesses that are, to put 24 it mildly, not typical businesses. We, as lawyers, as 25 a group -- I certainly say this for my own benefit, I</p>

<p style="text-align: right;">Page 17</p> <p>1 wouldn't repeat it to others, but I know enough lawyers 2 to whom it fits -- are very risk adverse. Despite the 3 fact that we represent clients in court, 4 temperamentally most of us are quite risk adverse. We 5 don't tend to take unnecessary risks. 6 I never could have done what was Mr. Havens 7 did in this business. I would have been too scared to 8 do it. It takes a very different level of risk 9 tolerance. And entrepreneurs, particularly in new 10 business deals, do things that everybody else says, 11 "That must be nuts for you to do it." And sometimes 12 they fail, and sometimes they succeed, and sometimes 13 they succeed well. 14 And Mr. Havens -- my client is one of those 15 people who has that different risk tolerance that I 16 think we kind of institutionally tend to have. And -- 17 but we need to understand that this is that kind of a 18 business, in how we approach it. 19 We also have to look at how the FCC is 20 responds. Because the FCC is a regulatory body. And 21 its mission is to preserve a fair market for 22 telecommunications in the public interest. It can't 23 act arbitrarily or capriciously, because doing so 24 destroys the market confidence in what its doing. And 25 it can't auction off licenses if the buyers of those</p>	<p style="text-align: right;">Page 19</p> <p>1 typically crimes of morale turpitude. Most of them, 2 actually, end up in child molestation convictions and 3 child porn convictions. And the other reason they take 4 licenses away, and that's the whole issue with the 5 MCLM, is lie to the FCC. 6 So while there is certainly a spectrum of 7 views about Mr. Havens and the FCC, and the 8 investigator who dealt with Mr. Havens on a day-to-day 9 basis because he's a challenging personality, the fact 10 is is that just because some people get irritated with 11 Mr. Havens is not a reason to take away any of his 12 licenses. 13 So how does that relate to the idea of 14 marketing 34 licenses? A significant part of the value 15 of these entities is the breadth of their holdings, 16 both geographically and in terms of having the 17 different radio spectrum frequency bands that work 18 together. 19 In a willing-seller, willing-buyer situation 20 they can get more for these licenses because they have 21 near monopoly control over this market. Dilution by 22 selling "Not based on what we can sell because we have 23 a buyer who wants it and we can a sell a fraction of 24 that license without harming the overall plan, but we 25 have another license over here that can give me the</p>
<p style="text-align: right;">Page 18</p> <p>1 licenses don't think they're going to have any value 2 because the FCC is going to do something different 3 later. So predictability is very important for them. 4 And so that's why we see the risk of adverse 5 action of the FCC as being lower. Because no matter 6 how legitimate Judge Sipple's annoyance with Mr. Havens 7 was -- and I've read his order enough times to 8 understand that Judge Sipple went well beyond his 9 jurisdiction when he entered that order. Which is one 10 of the ground on which we appealed. 11 And because the only jurisdictional basis for 12 a Hearing Determination Order is the summary judgment 13 filing that was done by the lawyers in Chadbourne and 14 Park back in 2014 on what was, at best, an ambiguous 15 record. In hindsight, if I were those lawyers, I would 16 have said, "Is it okay if I do this?" They didn't. 17 But issuing an HDO, otherwise, because the 18 licensee is contentious or litigious or just 19 persistent, is something that harms market confidence. 20 Because that's saying to other license holders, "Yes, 21 you have this valuable asset, but if you irritate us 22 you're going to lose that asset." 23 When -- the time for the issue -- Hearing 24 Determination Orders are basically for two classes of 25 very serious violations. The first ones are crimes,</p>	<p style="text-align: right;">Page 20</p> <p>1 same service at the same place, so I don't have an 2 issue selling this one," is something where we're 3 hurting not just the market value of those licenses, 4 we're potentially hurting the market value of a lot of 5 licenses, because now they can't deliver to a customer 6 the same level of coverage they could have before. 7 So with that, Your Honor, I'll turn it over 8 for questions. 9 THE COURT: All right. Mr. Kirsh? 10 MR. KIRSCH: Very quickly, if I could, Your Honor. 11 We, as you understand, vehemently disagree 12 with Mr. Downs' characterization of Mr. Havens' 13 analysis of his appellate chances in the FCC, and of 14 the goodwill that he does or doesn't have in the FCC 15 based on his past course of misconduct. 16 The -- it really doesn't matter what we think. 17 What really matters for this motion is what the 18 receiver and the court think, and I think that's 19 appropriate. 20 I think this motion is -- calls before the 21 court the -- the question of whether the receiver 22 should be allowed to use her sound business judgment to 23 act in the manner that she believes will preserve the 24 value of the licenses. And I think that's what this 25 motion is all about. I don't think it's a very</p>

<p style="text-align: right;">Page 21</p> <p>1 complicated issue.</p> <p>2 I would suggest, very frankly, that even if</p> <p>3 there were no deadlines this year coming up with any</p> <p>4 licenses, it would be even a conservative, sound</p> <p>5 business judgment for the receiver to sell all the</p> <p>6 licenses, because the value might soon disappear. But</p> <p>7 that's not before the court right now. So we fully</p> <p>8 support the receiver's motion that's before the court,</p> <p>9 as we said in our papers.</p> <p>10 And if you have any further questions of us, I'll</p> <p>11 be glad to try to answer them.</p> <p>12 THE COURT: All right. The first question that I</p> <p>13 have is, where exactly are we on the arbitration?</p> <p>14 MR. KIRSCH: So I think I'm the only person at</p> <p>15 this table that is involved, somewhat involved in the</p> <p>16 arbitration. We tried to explain --</p> <p>17 THE COURT: When is trial set?</p> <p>18 MR. KIRSCH: There is no trial set. There is a</p> <p>19 status conference set on July 12th. Mr. Havens, when</p> <p>20 he filed the bankruptcy --</p> <p>21 THE COURT: So on July 12th, if we presume that</p> <p>22 the order -- or the motion for reconsideration about</p> <p>23 dismissal of the bankruptcy is not granted, will that</p> <p>24 mediator be scheduling a trial?</p> <p>25 MR. KIRSH: So that's our plan. We asked the</p>	<p style="text-align: right;">Page 23</p> <p>1 authority that says otherwise, because I just don't</p> <p>2 think the stay -- and I haven't seen it.</p> <p>3 But let me ask you this question: How old is</p> <p>4 this arbitrator?</p> <p>5 MR. KIRSCH: This arbitrator is, I believe, 86 or</p> <p>6 87. I'm not sure.</p> <p>7 MR. DOWNS: I thought he was younger than that,</p> <p>8 but he's in his 80s.</p> <p>9 THE COURT: Get a new arbitrator. By the time you</p> <p>10 people are done, he'll be 105. Honestly. We already</p> <p>11 had one arbitrator that passed away in this case.</p> <p>12 Does this arbitrator have experience with the</p> <p>13 FCC?</p> <p>14 MR. KIRSCH: I don't believe so.</p> <p>15 THE COURT: Yeah. I'm not sure that the issues</p> <p>16 are FCC kind of issues; they're partnership issues more</p> <p>17 than anything else. Anyway.</p> <p>18 MR. DOWNS: It's a Triple A arbitration, Your</p> <p>19 Honor. And my limited exposure to Triple A --</p> <p>20 THE COURT: It's a Triple A arbitration.</p> <p>21 MR. KIRSCH: It is.</p> <p>22 MR. DOWNS: And I once was appointed as a party</p> <p>23 arbitrator in a Triple A arbitration and I walked</p> <p>24 through the process of how we got to the neutral, and</p> <p>25 as I recall they give you a list of names and you get</p>
<p style="text-align: right;">Page 22</p> <p>1 arbitrator to schedule a trial, after a reasonable --</p> <p>2 reasonably swift schedule to try to get the information</p> <p>3 we need from the newly named defendants and to get all</p> <p>4 the information we need to take our accounting before</p> <p>5 the arbitrator.</p> <p>6 And Mr. Havens has argued, in papers, already,</p> <p>7 that even if his reconsideration is denied and he</p> <p>8 appeals, then the stay should continue.</p> <p>9 THE COURT: Well, unless I'm wrong there is no</p> <p>10 stay at the moment, or we wouldn't be here today.</p> <p>11 Because Skybridge is indeed one of the entities that</p> <p>12 the receiver is in charge of.</p> <p>13 And I don't know who thinks that there is a</p> <p>14 stay, after an order of the bankruptcy court dismissing</p> <p>15 the bankruptcy. I think that it's legal error to say</p> <p>16 that motion for reconsideration extends the stay, or</p> <p>17 that an appeal does. That's sort of like saying, "Oh,</p> <p>18 I lost this lawsuit in superior court and I owe -- and</p> <p>19 the plaintiff says -- and has a judgment that I owe him</p> <p>20 \$1,000, but I'm going to appeal so I won't have to pay</p> <p>21 until the appeal's done."</p> <p>22 Well, that just isn't how it works. The</p> <p>23 decision is the decision.</p> <p>24 MR. KIRSCH: We've already --</p> <p>25 THE COURT: You have to show me some legal</p>	<p style="text-align: right;">Page 24</p> <p>1 -- it's sort of like the judicial court --</p> <p>2 THE COURT: I know.</p> <p>3 MR. DOWNS: -- the superior court arbitration,</p> <p>4 where you get to strike somebody and you get whoever</p> <p>5 isn't stricken.</p> <p>6 THE COURT: My one experience with Triple A</p> <p>7 arbitrators, when I was a lawyer, was that we had</p> <p>8 somebody who might have been 86 years old, I don't</p> <p>9 know. But he fell asleep in the middle of the</p> <p>10 arbitration and neither myself nor the other lawyer</p> <p>11 could bang on the table loud enough to wake him up.</p> <p>12 After that I wasn't a big fan, and I wouldn't</p> <p>13 permit my clients to go back to Triple A arbitrations.</p> <p>14 But we were stuck. I mean, they chose the arbitrator,</p> <p>15 we didn't.</p> <p>16 In any event, you all have chosen to go by</p> <p>17 arbitration, as I referred to before, as that seemingly</p> <p>18 inexpensive dispute arbitration -- dispute resolution</p> <p>19 process.</p> <p>20 Well, it looks to me like it's going to take a</p> <p>21 long time before the arbitration is concluded. As you</p> <p>22 already know from prior comments that I've made, I'm</p> <p>23 not a big fan of that. I think that the parties</p> <p>24 probably should go to a settlement conference and see</p> <p>25 whether they are able to resolve their differences.</p>

<p style="text-align: right;">Page 25</p> <p>1 But I can understand why it's really a 2 difficult puzzle to find a spot where Venn diagrams of 3 advantage overlap in any place. And I recognize that. 4 And I think you're going to need somebody making an 5 arbitration decision. 6 But -- and my task is to maintain the status 7 quo so that the parties both don't lose out because the 8 FCC does something about cancelling licenses in 9 response to the Sipple order. So I have to go back a 10 couple of steps and think about what the status quo is. 11 The status quo, in this endeavor, is to send 12 an application to extend or renew the licenses. That 13 status quo occurred already once, and somebody attached 14 the application. I found the application to be 15 interesting reading in that it really was just a bunch 16 of conclusions that pointed to the exhibits that were 17 not attached. 18 But it was an application that was cogent, 19 that on the face of it may have a real possibility of 20 being successful. I really honestly couldn't evaluate 21 it. But it certainly wasn't something that one could 22 just totally ignore if you're the FCC. 23 Trying to consider this situation, knowing 24 that it's going to take some time -- and I think that 25 we should -- the receiver should not be instructed to</p>	<p style="text-align: right;">Page 27</p> <p>1 of the circumstances that we're all in. 2 And I'm not sure who exactly could afford it, 3 but there's probably buyers out there, at Google or at 4 Apple, that might be interested in these particular 5 licenses to be able to pay the nine figures that they 6 might be worth. 7 And so liquidation might be something that we 8 consider in the future, particularly if the arbitration 9 isn't concluded in the next six months or so. 10 You have plenty of time in the next six months 11 to finish your arbitration so that we can end the 12 receivership. We're not going to indenture Ms. Uecker 13 for the rest of her life on this particular job. And 14 the court, too, doesn't think that we -- the court 15 doesn't want to continue the receivership for a long 16 time. It's a provisional remedy and it's pendente 17 lite. So we need the "lite" to occur. 18 So both Mr. Kirsch and Mr. Downs, your clients 19 need to know that they've got to finish this 20 arbitration, and if they don't, that there's -- there's 21 the prospect that the rational thing for the court to 22 do may well be to liquidate everything. I'm not making 23 that -- 24 MR. DOWNS: I'll be ordering the transcript and 25 providing it to my client. But would have, anyway,</p>
<p style="text-align: right;">Page 26</p> <p>1 sell these licenses because of the December deadlines 2 for expiration of the time limit. 3 But the instruction that I will make is that 4 the receiver is to make application to extend or renew, 5 along the same lines that the application had been 6 previously made regarding the licenses, that -- whose 7 deadline was March -- I forgot whether it was the 1st 8 or the 30th. But that's what the receiver should do in 9 order to maintain the status quo. 10 This is not to say that any particular license 11 shouldn't be sold. There might be business decisions 12 to do that, or to market it in -- because you can 13 market -- I understand that you do market them by 14 leasing out spectrum to people out there. That might 15 ordinarily be the course of events that would have 16 happened prior to the receivership, and I think that 17 the receiver needs to look for those opportunities. 18 But for the near future, I think that we're 19 going to go with the status quo of an enterprise that 20 takes a risk that they're going to have their licenses 21 extended or renewed. Okay? So that's -- that's my 22 inclination on that. 23 I do want you to know that I also have 24 considered whether liquidation of all the assets is a 25 reasonable sort of a solution to the problem, in light</p>	<p style="text-align: right;">Page 28</p> <p>1 even if you hadn't said that, Your Honor. 2 THE COURT: Well, all right. 3 So Mr. DeGroot, I'm going to impose on you to 4 write an order instructing the receiver to make 5 application to extend or renew the licenses that will 6 expire by the end of the year. 7 And, you know, the model that Mr. Havens 8 already produced might be a good starting place for 9 preparing her document. 10 MR. DeGROOT: So, Your Honor, may I ask a couple 11 of -- make a couple of inquires or a couple of comments 12 on -- 13 THE COURT: Sure. 14 MR. DeGROOT: -- in our discussion? 15 So, first of all, we have -- we have taken an 16 understanding, from our work at the outset, Mr. Havens 17 had three AMTS transactions that were in process at the 18 outset of the receivership. They were in various 19 states of negotiation. We've understood our -- 20 THE COURT: Mr. Downs, you don't object to them 21 concluding the transactions that were already in 22 progress, do you? 23 MR. DOWNS: Not in the -- not at all, Your Honor. 24 And certainly not in the abstract. I mean, 25 obviously --</p>

<p style="text-align: right;">Page 29</p> <p>1 THE COURT: All right.</p> <p>2 MR. DOWNS: -- at -- the term "The devil may well</p> <p>3 be in the details." But at the time -- I mean, we can</p> <p>4 speak, I think, out of code in this.</p> <p>5 At the time that -- as of November 16th, Mr.</p> <p>6 Havens was in the process of negotiating a deal with</p> <p>7 what used to be GE -- and they're somebody else now</p> <p>8 because it was sold to somebody else. I believe it</p> <p>9 involved licenses someplace in the Midwest, if I recall</p> <p>10 correctly.</p> <p>11 THE COURT: Well --</p> <p>12 MR. DOWNS: But I -- and they had another one with</p> <p>13 Alstom, as I recall, that was in the similar stages.</p> <p>14 If there is a third one, it has escaped me. Which I</p> <p>15 will blame on my own memory shortening.</p> <p>16 THE COURT: What I can tell you is that, from the</p> <p>17 court's perspective, if the deal was already in the</p> <p>18 making, go ahead and conclude it. Do run the terms by</p> <p>19 Mr. Havens and Mr. Leong before you finalize it. And</p> <p>20 if there are serious objections to it, come back and</p> <p>21 I'll decide. If there aren't serious objections to it,</p> <p>22 then conclude it.</p> <p>23 MR. DeGROOT: Those three would be, Your Honor,</p> <p>24 Alstom, A-l-s-t-o-m, PTC-220 and Portland General</p> <p>25 Electric. Those are the three that were being worked</p>	<p style="text-align: right;">Page 31</p> <p>1 THE COURT: All right.</p> <p>2 MR. DeGROOT: So -- so that would be of</p> <p>3 exceptional utility in --</p> <p>4 THE COURT: I think that it -- I would share the</p> <p>5 concern of the FCC that the Positive Train Control be</p> <p>6 implemented in as many places as it can. And I see it</p> <p>7 as an opportunity for the receiver to sell or lease --</p> <p>8 I'm not sure whether it's a license or whether it's a</p> <p>9 leasehold or whether it's a sale, but -- but to do so</p> <p>10 and to make that a higher-priority item.</p> <p>11 MR. DeGROOT: We'll put that in the order. The</p> <p>12 other --</p> <p>13 MR. DOWNS: Your Honor, may I make a suggestion on</p> <p>14 the mechanics on that?</p> <p>15 THE COURT: Sure.</p> <p>16 MR. DOWNS: Perhaps the way to handle that,</p> <p>17 hopefully to avoid unnecessary court appearances in the</p> <p>18 process, is for the receiver to reach out to Mr. Havens</p> <p>19 -- much as is happening with PTC-220, Alstrom and</p> <p>20 Portland General Electric under this order -- reach out</p> <p>21 to Mr. Havens and say, "Norfolk Southern," whoever it</p> <p>22 is, "wants to do this" --</p> <p>23 THE COURT: Well I can tell you that the answer</p> <p>24 would mostly be, "You didn't get a good enough deal."</p> <p>25 And I'm likely to not pay that much attention to that</p>
<p style="text-align: right;">Page 30</p> <p>1 on in some form prior to the receivership.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. DOWNS: That's correct. I had forgotten</p> <p>4 PTC-220. But that is correct.</p> <p>5 MR. DeGROOT: Two other points that I would ask</p> <p>6 you to consider, one is it is extremely important -- I</p> <p>7 cannot overemphasize the desire of the Federal</p> <p>8 Communications Commission to facilitate a technology</p> <p>9 called Positive Train Control.</p> <p>10 So, first of all, I would ask that you</p> <p>11 consider opening the order to allow the receiver to do</p> <p>12 AMTS spectrum deals that facilitate Positive Train</p> <p>13 Control technology.</p> <p>14 THE COURT: Does Amtrack buy the entire license or</p> <p>15 does Amtrack license a -- the use of the spectrum?</p> <p>16 MR. DeGROOT: So -- and I understand Mr. Downs'</p> <p>17 point.</p> <p>18 THE COURT: I don't know the --</p> <p>19 MR. DeGROOT: Yeah. No, what I -- what I'm quite</p> <p>20 sure the answer is, is that AMTS -- you'll need a</p> <p>21 portion to run your Positive Train Control system. So</p> <p>22 that when Mr. Havens has done Positive Train Control</p> <p>23 deals in the past, there is spectrum left over, so that</p> <p>24 the -- the nationwide -- the possibility of having a</p> <p>25 nationwide service is not precluded.</p>	<p style="text-align: right;">Page 32</p> <p>1 sort of a criticism.</p> <p>2 MR. DOWNS: I understand that, Your Honor.</p> <p>3 THE COURT: Or -- but if the criticism -- I think</p> <p>4 that it's fair for the receiver to communicate with Mr.</p> <p>5 Havens and Mr. Leong and tell them what she's going to</p> <p>6 do. And if -- with the specifics is fine.</p> <p>7 If there is a serious dispute about whether</p> <p>8 she should conclude a particular deal with Amtrack in</p> <p>9 North Dakota, for example, that's what I'm here for.</p> <p>10 MR. DOWNS: My hope is that we can get a lot of</p> <p>11 those -- a lot of those things either resolved or</p> <p>12 narrowed through discussion.</p> <p>13 THE COURT: Well, I would hope so. And I would</p> <p>14 anticipate, with good counsel on both sides -- all</p> <p>15 three sides, if you will, that you probably should be</p> <p>16 able to work everything out.</p> <p>17 MR. DeGROOT: It's easy to deal with counsel.</p> <p>18 THE COURT: Yeah.</p> <p>19 MR. KIRSCH: Thank you.</p> <p>20 MR. DeGROOT: You're welcome.</p> <p>21 THE COURT: All right.</p> <p>22 MR. DeGROOT: Your Honor, the other point I wanted</p> <p>23 to ask you about, and -- is our FCC lawyers in</p> <p>24 Washington have been on the receiving end of discreet</p> <p>25 inquiries about particular AMTS assets. Those</p>

<p style="text-align: right;">Page 33</p> <p>1 inquiries have generally come from utility companies. 2 I am -- I am not as sure about the ability -- 3 THE COURT: Puget Sound Energy company? 4 MR. DeGROOT: They have already have theirs. 5 They've already got their stuff. 6 But there is a lot of interest by utility 7 companies in the same spectrum band. What I don't know 8 is if those users have the ability to take spectrum 9 that leaves behind a sufficient amount to realize the 10 nationwide -- leave behind the nationwide. 11 What I -- what I -- 12 THE COURT: Well, that's -- you know, that's a 13 case-by-case situation where you're going to come to an 14 opinion, after you run it by Mr. Havens and Mr. Leong. 15 And if the answer, then, is inconclusive, you have some 16 folks, I think, that you can ask. That the -- the guy 17 that we approved as a spectrum salesperson, he'll be a 18 resource that can advise you about that. 19 MR. DeGROOT: So -- so -- 20 THE COURT: In either event, it's the same as the 21 other questions. You put together what you propose to 22 want to do. And you've got to tell people that you're 23 not the sole owners that can just act the way you want, 24 that you've got to consult with the other -- with the 25 parties, and then sometimes you have to consult with</p>	<p style="text-align: right;">Page 35</p> <p>1 And from our regulatory strategy perspective, 2 our usefulness to the FCC is that we -- we are useful 3 to the FCC if we can facilitate Positive Train Control. 4 So that's -- but if -- if we can also talk to the 5 utilities, find out what -- what manner they propose to 6 deal with us, we can take and say, "Listen, this is 7 what those folks want. You know, is this something 8 that you can live with, yes or no." 9 And then if -- if we -- if -- if we can come 10 to a consensus on that, then we don't need to bother 11 you. If we can't, at what point should we come to you 12 and say -- so let me give you an example so that I can 13 short circuit future visits. 14 If -- let's say that there's 6 megahertz' 15 worth of spectrum in a given location, and a utility 16 can serve its purposes by taking 2 megahertz. And 17 perhaps somebody believes that the 4 megahertz that are 18 left, that would remain in the receivership estate, 19 would be insufficient for the purposes of the future 20 plan for a nationwide network. And perhaps there is 21 other people say, "You know, that should be fine." 22 Do we come to you at the point where there is 23 a -- terms that we might deal on, or do we have to come 24 to you with a fully baked transaction? 25 THE COURT: If there is disagreement amongst the</p>
<p style="text-align: right;">Page 34</p> <p>1 me. 2 MR. DeGROOT: I -- so I understand right now that 3 we -- we will continue to understand our authority to 4 pursue the deals that were in process when the receiver 5 was appointed. 6 I'll also write up a proposed order that says 7 that we are empowered to pursue deals with Positive 8 Train Control. And obviously pursuing those deals 9 doesn't mean that they would be approved. And I 10 understand your preference to -- 11 THE COURT: You can -- it's not just Positive 12 Train Control, it's that the bird watchers want to 13 watch the birds and are willing to pay for a bit of 14 spectrum. And you want to make a deal along those 15 lines. It doesn't have to be just Positive Train 16 Control. 17 MR. DeGROOT: Okay. 18 THE COURT: All right. There are other buyers out 19 there. 20 MR. DeGROOT: There are. I mean, the two classes 21 of buyers that there are, in the limited -- because 22 we're just taking -- we're not -- we haven't been out 23 marketing this stuff, we've only been receiving 24 expressions of interest -- and the categories are 25 Positive Train Control and utilities.</p>	<p style="text-align: right;">Page 36</p> <p>1 parties, then the earlier the better. Frankly. 2 MR. DeGROOT: Okay. 3 THE COURT: Don't put that in the order. 4 MR. DeGROOT: No, that's fine. 5 And the other thing, Your Honor, is that I'm 6 understanding that our -- your preference is that the 7 receiver not be empowered to go out to the market 8 broadly and say that these assets are -- you know, you 9 can come to us and propose if you can -- you know, 10 limited spectrum -- 11 THE COURT: No. I'm not saying that. 12 MR. DeGROOT: So -- so if we want to go and pursue 13 that, that's -- 14 THE COURT: I think that it's fine to market. 15 MR. DeGROOT: Okay. 16 THE COURT: I mean, after all, this is a business 17 enterprise. 18 MR. DeGROOT: Okay. 19 THE COURT: And it becomes part of doing the 20 business and maintaining the status quo. I don't know 21 what marketing was done before, if any. But I see 22 absolutely nothing wrong with even spending some money 23 on marketing. 24 MR. DOWNS: This is a very small world, Your 25 Honor. Most of the people in this business who want</p>

<p style="text-align: right;">Page 37</p> <p>1 this stuff know who the players are.</p> <p>2 THE COURT: Well that might be the case.</p> <p>3 MR. DOWNS: And so -- yeah. So I think the</p> <p>4 marketing is not to buy a billboard on the 880. But,</p> <p>5 you know, I think the issue here -- and I'm sensing,</p> <p>6 maybe, some differences. There is no affirmative</p> <p>7 mandate to offer particular licenses for sale simply</p> <p>8 because they have expiration deadlines.</p> <p>9 But in the ordinary course of business, what</p> <p>10 you're ordering is the receiver has the right to</p> <p>11 entertain offers, to discuss them with Mr. Leong,</p> <p>12 discuss them with us. And then if there is an</p> <p>13 acceptable transaction, or a dispute over whether or</p> <p>14 not a transaction is acceptable, bring that to you for</p> <p>15 decision. Am I understanding it correctly?</p> <p>16 THE COURT: Well, if it's acceptable, you don't</p> <p>17 need to bring it to me. If there's a dispute about</p> <p>18 whether she should proceed, and the receiver, after</p> <p>19 considering both sides' arguments, or maybe both sides</p> <p>20 against the receiver's arguments, and still believes</p> <p>21 that she should persist in what she thinks is best,</p> <p>22 then that's when it needs to be brought to me.</p> <p>23 MS. UECKER: I think the concern, Your Honor, just</p> <p>24 a little confusion on my part, is people are coming to</p> <p>25 us and saying, "We're interested." Idaho Power just</p>	<p style="text-align: right;">Page 39</p> <p>1 MR. DeGROOT: I checked; my delete button will</p> <p>2 still work in Europe.</p> <p>3 Your Honor, we'll prepare orders and show them</p> <p>4 to the parties. And as soon as we can get those lined</p> <p>5 up we'll get them to you. Probably, I'm guessing,</p> <p>6 given the parties' time to review, that they'll</p> <p>7 probably show up here sometime in the middle of next</p> <p>8 week.</p> <p>9 THE COURT: All right. Well, have a pleasant</p> <p>10 vacation.</p> <p>11 MR. DeGROOT: Thank you, Your Honor. I really</p> <p>12 appreciate it.</p> <p>13 MR. DOWNS: Thank you, Your Honor.</p> <p>14 MR. DeGROOT: Yes. Your Honor? I'm sorry. The</p> <p>15 receiver just wants to make sure on the turnover of the</p> <p>16 2015 bills, that's included in the -- in your ruling on</p> <p>17 the fee bills?</p> <p>18 THE COURT: Oh, yes. Yes. Absolutely.</p> <p>19 MR. DOWNS: I understood that.</p> <p>20 MS. UECKER: Okay.</p> <p>21 MR. DeGROOT: Thank you, Your Honor.</p> <p>22 MS. UECKER: Thank you.</p> <p>23 THE COURT: There's no question. It's all the</p> <p>24 bills that you've asked for in your motions.</p> <p>25 MS. UECKER: Okay. Thank you.</p>
<p style="text-align: right;">Page 38</p> <p>1 called me. They're sending me a letter of intent. My</p> <p>2 concern is to make sure that maybe Montana Power wants</p> <p>3 to buy it, too. So if I can market that in general, I</p> <p>4 may get more interested parties.</p> <p>5 THE COURT: Sure. Sure. You should do that.</p> <p>6 MS. UECKER: Okay. Okay. I just want to be</p> <p>7 clear. Okay.</p> <p>8 THE COURT: It's a good use of your time.</p> <p>9 MS. UECKER: Okay. Okay.</p> <p>10 THE COURT: As expensive as it is.</p> <p>11 MS. UECKER: All right.</p> <p>12 THE COURT: Is there anything else that we need to</p> <p>13 talk about?</p> <p>14 MR. DeGROOT: I'm going to use this -- as little</p> <p>15 of my time as possible over the next month in</p> <p>16 connection with all of this. With your indulgence.</p> <p>17 THE COURT: Well, my understanding is that you</p> <p>18 were going on a family vacation, and you think that</p> <p>19 you're European or something because you get a whole</p> <p>20 month off.</p> <p>21 MR. DeGROOT: I promise to work weekends to make</p> <p>22 up for it when I get back.</p> <p>23 Your Honor --</p> <p>24 MR. DOWNS: That and the 10,000 e-mails that he's</p> <p>25 going to have sitting in his inbox.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. DeGROOT: Thank you, Your Honor.</p> <p>2 (Whereupon, the proceedings concluded</p> <p>3 at 4:43 o'clock p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 41</p> <p>1 STATE OF CALIFORNIA) 2 COUNTY OF ALAMEDA) 3 I, JOAN MARTIN, a Certified Shorthand Reporter 4 of the State of California, do hereby certify that 5 the foregoing proceedings were reported by me, a 6 disinterested person, and was thereafter transcribed 7 under my direction into typewriting and is a true and 8 correct transcription of said proceedings. 9 I further certify that I am not of counsel or 10 attorney for either or any of the parties in the 11 foregoing proceeding and caption named, nor in any way 12 interested in the outcome of the cause named in said 13 caption. 14 Dated the 5th day of July, 2016. 15 16 17 18 JOAN F. MARTIN 19 CSR No. 6036 (California) 20 21 22 23 24 25</p>	

Exhibit 2

See pp. 47-51

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 16-10626 (CSS)
. Chapter 11
SKYBRIDGE SPECTRUM FOUNDATION, .
. Courtroom No. 6
. 824 Market Street
. Wilmington, Delaware 19801
. Debtors. . July 11, 2016
. 11:00 A.M.

TRANSCRIPT OF HEARING
BEFORE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording:
transcript produced by transcription service.

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INDEXPageNOTICE OF AGENDA MATTERS:

For the Debtors, by Mr. Allinson

4

For Dr. Arnold Leong, by Mr. Keane

For Dr. Arnold Leong, by Mr. Richards

For Susan Uecker, by Mr. Miller

For Puget Sound, by Mr. Driscoll

For Puget Sound, by Mr. Smith

1 (Proceedings commence at 11:00 a.m.)

2 (Call to order of the Court)

3 THE COURT: Please be seated.

4 MR. ALLINSON: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. ALLINSON: Elihu Allinson, proposed counsel to
7 the Debtor Skybridge Spectrum Foundation.

8 We have one item on the agenda. This is the time
9 the Court has set to hear Debtors' motion for reconsideration
10 of order dismissing the case.

11 By way of brief background, I'd like to bring the
12 Court up to speed as to some recent developments. Skybridge
13 is a 501(c)(3) tax exempt non-profit non-stock Delaware
14 Corporation. It was formed in 2006 for charitable,
15 educational and scientific purposes including providing
16 programs, education and research that promoted public safety,
17 environmental protection and the preservation and sound use
18 of scarce public resources.

19 The main goal of the Debtors' exempt purpose
20 mission and business plan is to implement nationwide
21 ubiquitous, including areas not served or reliably served by
22 wireless carriers, highly accurate and precise radio based
23 positioning, navigation and timing applications benefiting
24 the general public and national welfare. Debtor carries out
25 its public interest mission and charter as a private

1 operating foundation as defined in the Internal Revenue Code
2 and IRS rules.

3 Mr. Havens is the Debtors' sole member, sole
4 director and president; performing these roles as an unpaid
5 volunteer up to the period of the receivership action.
6 Debtor utilized contractors to carry out its development
7 activities. Receiver has discontinued all of those
8 activities. In approximately February of 2016 she was
9 granted authority to sell substantially all of Skybridge's
10 licenses. On March 16th, pursuant to an action by written
11 consent, Mr. Havens filed the petition and soon thereafter
12 the Debtor demanded turnover for the receiver who chose not
13 to comply.

14 On March 26th the Court granted receiver emergency
15 stay relief to file certain license renewals and Havens was
16 authorized by the Court to participate in that process, which
17 he did. At that hearing the Court admonished all the parties
18 to file pleadings to put the turnover issue in play.
19 Thereafter, the parties filed several motions including
20 receiver status quo motion, Leong's dismissal motion, Leong's
21 amended motion excusing turnover, granting stay relief or
22 appoint a trustee. Debtor filed its turnover motion and
23 request for first day relief.

24 Objections and joinders were filed all around,
25 including by creditor Puget Sound Energy, Inc. All motions

1 were set for hearing on May 6th.

2 In April the parties cooperated in ensuring that
3 required insurance policies were renewed for all of the
4 entities. The Section 341 meeting was held on April 14th and
5 continued. The Debtor filed its initial monthly operating
6 report on April 25th and paid quarterly Trustee's fees
7 during, approximately, the first week of May. The Debtor
8 filed its schedules and statements of financial affairs early
9 in the morning of May 6th. At the May 6th hearing,
10 referencing an injunctive provision in the receivership
11 order, the Court, on its own initiative, dismissed Debtors'
12 case on account of an unauthorized file.

13 The injunction reads as follows:

14 "Defendant is enjoined from commencing,
15 prosecuting, continuing to enforce or enforcing
16 any suit or proceeding in the name of the
17 receivership entities as defined in attachment 1
18 or, otherwise, acting on behalf of the
19 receivership entities."

20 There was no evidence taken and none of the
21 motions teed up for that hearing were addressed by the
22 litigants. I have an exhibit binder that we put together,
23 Your Honor, and I have a copy for the Court if I may
24 approach.

25 THE COURT: Yes.

1 MR. ALLINSON: This is Exhibit D1.

2 THE COURT: Thank you.

3 MR. ALLINSON: A transcript from the May 6th
4 hearing is Exhibit D1. That very day the receiver diverted
5 \$635,000 dollars from Debtors' cash account. Debtor moved
6 for reconsideration on May 20th. The matter has been fully
7 briefed. During the last week of June the California
8 Superior Court entered an order denying, without prejudice,
9 receivers motion for authority to sell substantially all of
10 the remaining licenses; those of the non-Debtors.

11 Judge Roesch cited concerns about the receivership
12 entities potentially suffering unnecessary financial loss as
13 a consequence. The receiver is to seek renewal of those
14 licenses and may still market them, carry out deals Havens
15 initiated and be receptive to inquiries, but a wholesale sale
16 will not be contemplated for five or six months so the
17 parties can have time to conclude the arbitration. Exhibit
18 D14 is a copy of the transcript from that hearing.

19 The Judge's decision corroborates one of Debtors'
20 main reasons for making its bankruptcy filing in the first
21 place. Preserving its assets because receiver had said about
22 selling Debtors' licenses unnecessarily and wastefully. The
23 other valid bankruptcy purpose was to reorganize as a going
24 concern, restore goodwill value; thereby, maximizing value
25 for the benefit of all legitimate creditors and permitting

1 Skybridge to implement its public benefit mission. In short,
2 there was and is no legitimate reason to liquidate Skybridge.
3 Now there is no longer a pre-textual melting iceberg to be
4 managed.

5 Leong has no membership interest or ownership
6 interest in Skybridge and he has not even obtained a judgment
7 against it. Debtor should not be denied an avenue to
8 reorganize under Chapter 11, but as a practical matter that
9 is exactly what the injunctive provisions of the receivership
10 order do. It is also worth noting that Judge Roesch also
11 recently denied receivers' motion to settle with Puget Sound
12 due to similar concerns over unnecessary possible financial
13 losses. This further corroborates that Debtors' filing was
14 for a valid bankruptcy purpose.

15 Debtor respectfully submits that the Court must
16 reconsider its dismissal order and reinstate the bankruptcy.
17 In 1990 our District Court in the Brambles opinion stated
18 that in exercising its discretion on ruling on a motion or
19 re-argument or re-consideration the Court must keep an open
20 mind. Re-argument may be appropriate where the Court has
21 made a decision outside the adversarial issues presented to
22 the Court by the parties. That, of course, is just the
23 situation we have here.

24 In its pleadings, Debtor advanced four main
25 reasons for re-consideration. First, the Court overlooked a

1 provision of the modified receivership order by which Havens
2 was authorized to file the bankruptcy. Second, the Court
3 misapprehended other provisions of the receivership order
4 that either directly barred Debtor from filing or, when taken
5 together and applied on these facts, barred every avenue that
6 otherwise might have been available to Debtor as a practical
7 matter.

8 Third, the analogies drawn by the Court to Judge
9 Shannon's 2014 decision in In Re Farris Minor Holdings
10 Limited are distinguishable. The basis on which the Court
11 distinguished In Re Orchards Village Investments, LLC
12 misapprehended the scope of the injunctive provisions of the
13 receivership order.

14 Fourth, Debtor submits that U.S. Supreme Court
15 jurisprudence demonstrates that the Court looks to Corporate
16 Governance Law of the State of Incorporation as opposed to
17 the injunctive provisions of Foreign Receivership Law when
18 ascertaining who is authorized to act for a corporation.
19 Additionally, it's not whether Debtor may file, but who may
20 file distinction is not legally supportable as espoused in
21 2013 by the U.S. District Court for the Central District of
22 California in the In Re El Torero Licores decision. Debtor
23 also articulates a fifth reason why the Court must
24 reconsider. That is that the May 6th hearing did not afford
25 Debtor its Fifth Amendment right of due process and the

1 dismissal order is, therefore, void.

2 It is not my intention to belabor the record by
3 repeating the contents of Debtors' papers, but rather briefly
4 highlight some of the more salient points. Debtor expressly
5 preserves all of its arguments, even if not addressed here
6 today.

7 First, Judge Roesch, citing (indiscernible) *sua*
8 *sponte* modified the receivership order 10 weeks after it had
9 originally been entered. As modified, Havens was authorized
10 to represent the receivership entities in the arbitration.
11 The arbitration provides -- I'm sorry, the modified piece of
12 the receivership order provides that Mr. Havens may assert
13 any claims or defenses on behalf of the receivership entities
14 and/or himself in the arbitration, including those already
15 pending in the arbitration.

16 The rules by which the arbitration would be
17 conducted were set forth in the two original LLC operating
18 agreements; that of Telesaurus VPC in 1999, which is now
19 known as Verde Systems LLC, and Telesaurus Holdings GB, LLC
20 in 2001. Those operating agreements are Exhibits 5 and 6.

21 The identical language is found at Section 9.4 of
22 each, it's called interim measures. It states that either
23 party hereto may apply to a Court of competent jurisdiction
24 for injunctive or equitable relief pending final
25 determination of rights and obligations by arbitration in

1 accordance with Section 9.4 of the interim order; provided
2 that the party applying for such interim order shall
3 forthwith upon the grant, if any, of the interim order,
4 commence arbitration/proceedings in accordance with this
5 agreement in order to obtain the final determination of the
6 dispute or disputes before the Court, leading to the grant of
7 the interim order and, if necessary, apply to stay all
8 further proceedings before the Court in order to do so.

9 Of note, Leong invoked this very provision of the
10 arbitration procedures in order to obtain the receivership
11 order in the very first place. The California Court accepted
12 Leong's assertion that Section 9.4 permits a party, in the
13 arbitration, to seek and obtain injunctive or equitable
14 relief in another Court during the pendency of the
15 arbitration. Accordingly, the modified modifications to the
16 receivership order opened the door for Havens filing and
17 reconsideration a warranted.

18 Next, the Court did not understand the
19 receivership order to bar the Debtor from filing bankruptcy,
20 but the injunctive provision applies expressly to all
21 Defendants including Debtor. As it's written, the
22 injunctions apply to "Defendant," and that's at paragraph 28
23 of the receivership order. Defendant is Warren Havens, *et*
24 *al*; that's at the very top of the receivership order. *Et al*
25 is defined as Environmental LLC, Environmental II LLC,

1 Intelligent Transportation & Monitoring Wireless LLC, V2G
2 LLC, ATLAS Wireless LLC, Skybridge Spectrum Foundation, Verde
3 Systems LLC, Telesaurus GB LLC and Does 1-30. That's
4 reflected in the caption of the second amended complaint that
5 Mr. Leong filed on July 10th, 2015; copy of which the first
6 page of that complaint is provided at Exhibit D13.

7 The receivership order read plainly unambiguously
8 seeks to impose an outright bar on the Debtors ability to
9 file bankruptcy. This is patently unconstitutional. As
10 Judge Carey noted recently:

11 "The federal public policy to be guarded here is
12 to assure access to the right of a person,
13 including a business entity, to seek federal
14 bankruptcy relief as authorized by the
15 Constitution and enacted by Congress. It is
16 beyond cavale that a state cannot deny to an
17 individual such a right."

18 That was from Intervention Energy Holdings
19 decision.

20 The injunction in the receivership order is
21 unconstitutional. Reconsider is warranted on this basis.
22 Alternatively, there is a second injunction in the
23 receivership order beyond the cohabitation on commencing
24 proceedings that caught the Court's eye. It restrains Havens
25 and the other Defendants, including Skybridge, from

1 interfering in anyway with the substitution of the receiver
2 as the individual responsible for the management of the FCC
3 licenses and receivership entities. Taken together, these
4 two injunctions foreclose all options for Debtor as a
5 practical matter.

6 As to receiver filing a Chapter 11 petition on
7 Skybridge's behalf the Court tacitly acknowledged the fox
8 guarding the hen house implications of that alternative when
9 it accepted as fair enough the responsive colloquia
10 questioning when a liquidating receiver would ever file a
11 petition to reorganize. Moreover, it is far from clear
12 whether receiver could validly file a bankruptcy petition in
13 any event. The receivership order provides no such specific
14 authority to receiver, but rather merely sets forth receivers
15 powers and duties where a defendant files bankruptcy.

16 The California Receivership Statute provides no
17 such express authority either. It provides the receiver has,
18 under the control of the Court, power to bring and defend
19 actions in his own name as receiver, to take and keep
20 possession of the property, to receive rents, collect debts,
21 to compound for and compromise the same, to make transfers
22 and generally to do such acts respecting the property as the
23 Court may authorize.

24 One bankruptcy court considering the matter as one
25 of first impression was highly dubious. The U.S. Bankruptcy

1 Court for the District of Massachusetts in 1994 stated as
2 follows:

3 "The Court's decision is governed by two
4 inescapable consequences of the receivership;
5 1) the receiver while clothed with many of the
6 powers and duties of a director of a corporation
7 as a result of the June 11th, 1993 order
8 appointing him is not a substitute director of
9 milestone and is not the corporation; 2) the
10 filing of the bankruptcy petition must have the
11 effect of terminating the receivership."

12 With respect to the first observation the Court
13 has been unable to find any authority for the proposition
14 that a receiver can replace a director; although, a receiver
15 can perform some of the directors' management duties.
16 Accordingly, the only authority for the filing of the
17 voluntary petition was that granted to the receiver by the
18 Superior Court. The Superior Court's exercise of its
19 discretion to allow the receiver to file a bankruptcy
20 petition appears to be unprecedented.

21 With respect to the latter observation, given the
22 control and supervision, State Court's and Federal Bankruptcy
23 Courts exercise over receiverships in bankruptcy cases
24 respectfully the two proceedings cannot co-exist. Federal
25 pre-emption compels the conclusion that the receivership must

1 yield in all aspects. That is the Milestone Educational
2 Institute decision which is at 167 Bankruptcy 716.

3 Ultimately, the Massachusetts Bankruptcy Court
4 granted relief from stay and suspended all activity in the
5 bankruptcy case to permit the Massachusetts Appeals Court to
6 review the Superior Court's order and address novel and
7 unsettled issues of Receivership Law that may include whether
8 a State Court receiver can be empowered to commence a
9 bankruptcy case for the corporation in the absence of consent
10 by the directors. Again, a reconsideration is warranted.

11 Next, at the hearing proposed counsel drew the
12 Court's attention to the In Re Orchards Village Investments
13 LLC decision out of the Bankruptcy Court for the District of
14 Oregon in 1985 and recorded the following passage:

15 "When Congress exercises its constitutional
16 authority to adopt bankruptcy laws it pre-empts
17 and supersedes all State, Bankruptcy and
18 Insolvency Laws, and other State Law remedies
19 that might interfere with the Uniformed Federal
20 Bankruptcy System."

21 Upon returning from Chambers the Court
22 distinguished Orchards stating:

23 "In that case only the receiver was allowed to act
24 on behalf of that entity. The shareholders
25 limited liability company members, etc., were

1 prohibited. They couldn't act because the way
2 that was written only the receiver could act."

3 That's not what is happening here. There is no
4 limitation on the Debtor filing bankruptcy. There is no
5 limitation from a non-enjoined party from acting on behalf of
6 a the Debtor. Respectfully, that is what's happening here
7 because the injunctions do not apply solely to Havens. By
8 their express terms they apply to all Defendants, including
9 the Debtor. Accordingly, there is a limitation on the Debtor
10 from filing.

11 After ruling out an involuntary position, or a
12 stop transfer or other appointment by Havens this leaves,
13 potentially, only the receiver. And as we have seen even
14 that is not certain just as in Orchards. Accordingly, there
15 is no reason why the injunction, as applied, should be upheld
16 on the basis that the facts in Orchards are distinguishable;
17 they are not.

18 The Court also referenced, and presuming here,
19 Judge Shannon's decision in In Re Farris Minor Holdings
20 Limited. In that 2014 case Judge Shannon stated:

21 "The receiver was vested with control, dominion
22 and authority over the shares, and that,
23 effectively, removed from Mr. Gongi the ability
24 to use or vote those shares in order to take
25 action. And to the extent there is any

1 uncertainty about it, it is certainly my
2 assessment that receiver Mr. Jenkins, not
3 Debtors' sole director Mr. Gongi, possess the
4 Sole legal authority to vote those shares and to
5 Take action with respect to those Debtors."

6 A copy of that transcript is at Exhibit D8.

7 The receiver in that case had actually taken
8 physical possession of the equity shares; not so in this
9 case, there are no equity shares. And receiver was not given
10 dominion and control over Havens membership interest in
11 Skybridge. The receivership order in this case is more akin
12 to those cited in Farris Minor pleadings that Judge Shannon
13 referred to as involving a State Court bar upon officers and
14 directors from filing from bankruptcy or from, otherwise,
15 interfering with the receivership. Judge Shannon commented
16 that those cases seemed to him to present a more nuanced
17 question.

18 Next, there is binding Supreme Court jurisprudence
19 that dictates the outcome. First, it has long been the law
20 of the land that a corporation takes its charter with it
21 wherever it goes. And every person who deals with it
22 everywhere is bound to take notice of the provisions which
23 have been made in its charter for the management and control
24 of its affairs both in life and after dissolution. That was
25 the Relfe vs. Rundell decision of 1880.

1 With Relfe as a backdrop, in 1929 the Supreme
2 Court held in International Shoe Company vs. Pinkus that a
3 State Court receivership could not prevent a corporate Debtor
4 from seeking relief under the Bankruptcy Act. It held in
5 respect of bankruptcies the intention of Congress is plain.
6 The national purpose to establish uniformity necessarily
7 excludes State regulation. Congress did not intend to give
8 insolvent Debtors seeking discharge or their creditors
9 seeking to collect claims. Choice between the relief
10 provided by the Bankruptcy Act and that specified in State
11 Insolvency Laws states may not pass or enforce laws to
12 interfere with or compliment the Bankruptcy Act or to provide
13 additional or auxiliary regulations.

14 Pinkus teaches that State Law interference with
15 the Bankruptcy Laws via auxiliary regulation here an attempt
16 by a California Court to disenfranchise Debtors' board,
17 dually constituted under Delaware Law, is unenforceable. A
18 system of uniformed national Bankruptcy Laws requires State
19 Law to yield.

20 In 1945 the Supreme Court rendered its decision in
21 Price vs. Gurney. There the Court held that when determining
22 whether a bankruptcy petition has been filed by those that
23 have authority to so act, the authority finds its source in
24 local law. The Court in Price went onto hold that a
25 bankruptcy petition by stockholders was unauthorized when

1 State Law vested management in a board of directors. To what
2 local law was the Price Court referring. In our context
3 would it be California Receivership Law or Delaware General
4 Corporation Law.

5 Price did not deal with a foreign receivership
6 injunction. Taking Relfe and Price together the conclusion
7 is inescapable that one looks to the law of the state of
8 incorporation to ascertain corporate authority; not a foreign
9 state's receivership law. It should be noted, however, that
10 this result might differ in a home state receivership
11 scenario where the law which clothed, in this case I just
12 elusion Trustee, with this trust was, in legal effect, part
13 of the charter of the corporation, as the Relfe Court stated.

14 Accordingly, the overreaching receivership
15 injunctions on Havens are unenforceable and reconsideration
16 is warranted. We now come to the recent decision granting
17 dismissal on account of an unauthorized filing using language
18 very similar to the Courts; referring to the 2013 decision In
19 Re El Torero Licores from the Central District of California.
20 The State Court in that case vested receiver with sole
21 authority to file a bankruptcy petition on behalf of the
22 Debtor and explicitly deprived Debtors' principals of doing
23 so. It stated the receivership order, however, does not
24 divest Debtor from its power to seek bankruptcy protection.
25 Rather, the order identifies who has the power to file the

1 bankruptcy petition on behalf of Debtor.

2 Additional facts on the record in that case are
3 thin, but it does not appear that Licores dealt with a
4 foreign receivership or a foreign entity. Its terse
5 assertion that "State Law includes the decisions of State
6 Courts" does not offer any insight as to whether it was
7 dealing with the law of more than one state, or a state other
8 than the home state or solely of the home state.

9 The Licores decision cites to the U.S. Supreme
10 Court's 1945 decision in Price for the proposition that when
11 determining whether a bankruptcy petition has been filed by
12 "those who have authority to so act, that authority finds its
13 source in local law." The full quote from Price reads as
14 follows:

15 "Nowhere is there any indication that Congress
16 bestowed on the Bankruptcy Court jurisdiction
17 to determine that those who, in fact, do not have
18 the authority to speak for the corporation as a
19 matter of local law are entitled to be given
20 such authority and, therefore, should be
21 empowered to file a petition on behalf of the
22 corporation."

23 But the Court in Price went onto hold unremarkably
24 that a bankruptcy petition filed by stockholders was
25 unauthorized when State Law vested management and a board of

1 directors. Price simply did not deal with a foreign
2 receivership injunction; thus, there is no reason to infer,
3 in the context of a foreign receivership, that Price directs
4 the Bankruptcy Court to examine the filers bonafide's based
5 on the foreign state's law. Price was not decided in the
6 context of such facts.

7 Rather, Relfe teaches that every corporation
8 necessarily carries its charter wherever it goes for that is
9 the law of its existence. Pinkus teaches that State Law
10 interference with the Bankruptcy Laws where auxiliary
11 regulation is unenforceable because Congress did not intend
12 to give Debtors or their creditors seeking to collect claims
13 choice between the Bankruptcy Laws and State Insolvency Laws.

14 This analysis comports with that of the Orchards
15 Court when it was interpreting the phrase source in local law
16 in Price. It concluded that the phrase merely recognizes the
17 reality that business entities who are eligible to be Debtors
18 are creatures of state rather than Federal Law and their
19 governance structures are determined by State Law. Debtor
20 submits it is clear that the source in Local Law that the
21 Price Court refers to is the governance scheme enacted by the
22 state under whose laws the entity was formed; not the
23 interfering or auxiliary injunctions of a Foreign
24 Receivership Court.

25 In accordance with Relfe and Pinkus the latter

1 would be prohibited. Relfe, Pinkus, Price and Orchards can
2 all be read together in harmony, the Court simply does not
3 address the auxiliary regulation concerns in Pinkus. The
4 Licores Court paid lip service to Price and failed to discuss
5 Relfe or Pinkus at all. Here, Havens is the only person
6 currently qualified and properly installed under Delaware Law
7 as a director of the Debtor; yet, the Licores Court would
8 uphold an injunction over him.

9 Licores ignores Relfe and Pinkus and cherry picks
10 Price out of context to get to this result. The Licores
11 Courts reliance on an expansive interpretation of Price which
12 it quotes out of context is conclusory. And while the
13 Licores Court states that it was not convinced by the
14 rationale in Orchards it does not explain why. Furthermore,
15 Licores appears to be a home state case and is, therefore,
16 inapposite. Debtor respectfully submits that Licores was
17 wrongfully decided and should not be followed.

18 Leong's cases do nothing to sure-up Licores and
19 each is distinguishable. Pembroke Pines Mass Media dealt
20 with the enforcement of a foreclosure judgment, but Leong has
21 not obtained any judgment here. Moreover, Pembroke's failure
22 to defend against the appointment of the receiver worked a
23 forfeiture of its right to file bankruptcy. Again, there are
24 no similar facts here.

25 In FKF Madison Park that case did not read

1 involuntary receiver at all. There was a management deadlock
2 dispute raising issues of corporate authority. There is no
3 management deadlock here. Havens is Skybridge's sole member.
4 FKF actually supports Debtors' position. It states
5 determining authority is a question of State Law. And in the
6 case of a limited liability company, it's governed by the
7 operating agreement which defines the rights of its members.

8 Heritage Press is easily distinguishable. There
9 was no receiver in that case. The issue was corporate
10 authority as set forth in a pledge agreement. It was a
11 contract interpretation case and a shareholder control
12 dispute. Again, Leong has no membership interest in
13 Skybridge.

14 Finally, FITC, Inc. was a commodity futures
15 trading commission fraud case involving a federally appointed
16 receiver, pursuant to federal statute on an extensive record
17 of conversion, misappropriation and concealment of investor
18 funds. Not an issue of impermissible state ancillary
19 regulation of the bankruptcy laws. Reconsideration is
20 warranted.

21 Finally, the May 6th hearing did not afford Debtor
22 with due process. First, the authorization issue was not
23 raised by any of my able colleagues seated across from me.
24 So Debtor received no prior notice that the issue would be
25 taken up until the May 6th hearing was already underway and

1 the issue was raised out of the blue. Moreover, the May 6th
2 hearing did not afford Debtor a reasonable opportunity to be
3 heard on what was effectively a capital sentence on Debtors'
4 case and its request to brief the issue was denied; thereby,
5 depriving it of a reasonable opportunity to be meaningfully
6 heard.

7 Failure to schedule a further hearing on the
8 Court's authorization issue was legal error. For that I cite
9 the In Re Crickler decision from 2012 the District Court of
10 the Northern District of Indiana which held that while a
11 Bankruptcy Court can *sua sponte* dismiss a Chapter 11 case, it
12 may do so only after notice and hearing at which evidence can
13 be presented in order to provide a factual basis for the
14 Bankruptcy Court's decision. Respectfully, an order entered
15 without due process is void.

16 To sum up, under the receivership order and
17 applicable law who is not authorized to file bankruptcy for
18 Debtor. First, Debtor. The proceeding commencement
19 injunction expressly applies to all Defendants, including
20 Skybridge. Next, the seven non-Debtor LLC's. They are also
21 subject to that injunction and they have no membership
22 interest in the Debtor anyway. Next, Leong. He has no
23 membership interest in the Debtor. Next, petitioning
24 creditors. A non-profit is not subject to an involuntary.

25 Next, receiver. A decision of this magnitude must

1 be made by the board exercising business judgment. A
2 receiver may not be substituted for a director, per
3 Milestone. A bankruptcy and receiver cannot co-exist.
4 Receivership must yield per Milestone. Receiver was not
5 expressly authorized in either the receivership order or the
6 statute to file a bankruptcy petition.

7 Next, an assignee of Havens shares. Skybridge is
8 a non-stock corporation. Next, Havens officer or director
9 appointee. Havens cannot make such an appointment because of
10 the non-interference injunction with receiver as management.
11 Additionally, the Court warned that any such action might be
12 regarded as possible bad faith.

13 Who does that leave? Havens. How and why is he
14 authorized to file for Debtor? First, Havens comprises
15 Debtors dually constituted board per Relfe and Price. All
16 are bound to take notice of management and control provisions
17 of Debtors' charter per Relfe. The injunctions constitute an
18 impermissible additional or auxiliary state regulation that
19 interferes with or compliments the bankruptcy laws per
20 Pinkus.

21 Next, the proceeding commencement injunction is
22 unenforceable as to Havens as applied because it
23 disenfranchises Debtors' board, thereby frustrating as a
24 practical matter Debtors only means to exercise its right to
25 access federal bankruptcy protection. Moreover, the Licores

1 Court's decision on the who may file distinction elevates
2 form over substance, misconstrues the Supreme Court's
3 decision in Price and ignores Supreme Court binding precedent
4 in Relfe and Pinkus.

5 Finally, Havens is expressly authorized by the
6 modified receivership order to represent the Debtor in the
7 arbitration proceeding and the arbitration agreement at
8 Section 9.4 expressly authorizes the parties to access any
9 Court of competent jurisdiction for injunctive or other
10 equitable relief.

11 Receiver contends that Debtor conflates
12 Skybridge's right to file bankruptcy with Havens ability to
13 authorize Skybridge to file for bankruptcy. This superficial
14 analysis of Debtors' position misses the point. Debtor is
15 not contending that Havens has a constitutional right to file
16 bankruptcy on behalf of Skybridge. Debtors' point is that as
17 a practical matter no one else can do so, thus Debtor is left
18 impermissibly stranded. Havens constitutes Debtors' board,
19 but is restricted from commencing proceedings. And he is
20 subject to the non-interference injunction which restricts
21 him from installing any other potential officers or directors
22 because he alone holds the power of appointment.

23 The cumulative effect of the injunctions against
24 him, as applied, deprives Skybridge of its right to access
25 the Uniform National Bankruptcy Laws as all other avenues by

1 which Skybridge could exercise those rights are foreclosed as
2 a practical or legal matter, or by other impermissible
3 provisions contained in the receivership order. The
4 receivership injunctions on Havens are overreaching and as to
5 Debtor are patently unconstitutional.

6 Respectfully, any contrary interpretation of the
7 effect of the injunctions on Havens would delegate form over
8 substance. Debtor respectfully requests that the Court
9 declare its dismissal order void for want of due process or
10 in the alternative otherwise reconsider and vacate its
11 dismissal order, re-instate Debtors' bankruptcy and grant the
12 Debtor such other and further relief as the Court deems just
13 and proper.

14 I'm happy to respond to questions or yield the
15 podium.

16 MR. KEANE: Good morning, Your Honor, for the
17 record Peter Keane of Pachulski Stang Ziehl & Jones for Dr.
18 Arnold Leong.

19 Your Honor, we filed an objection to the motion
20 for reconsideration. I'll try not to repeat every point we
21 made in the papers. I'll try and focus on some of the
22 highlights.

23 Your Honor, there are three different grounds for
24 reconsideration -- intervening change and controlling law.
25 Debtor has not identified any here. The availability of new

1 evidence -- the Debtor has not identified any. The third is
2 the need to correct clear error of law or fact or to prevent
3 manifest injustice. The Debtors seem to be focusing all of
4 its point on this third ground, but none are sufficient to
5 warrant reconsideration here.

6 And, Your Honor, the procedural hurdle here has
7 not been overcome and we believe the Court's analysis can
8 stop there and the motion to be red denied. Motions for
9 reconsideration are not for disagreements or for how a Court
10 ruled. That's what appeals are for. And the Court's
11 decision to file one line of authority over another is not a
12 basis for reconsideration when neither line of authority is
13 controlling any precedent.

14 Your Honor, even if the Court does reconsider, we
15 believe your decision was correct. In its ruling, the Court
16 simply agreed with one line of authority set forth in the El
17 Torero case and Judge Shannon's decision and the Farris Minor
18 Holdings case. That a receiver should order that merely
19 restricts who has authority to file bankruptcy on behalf of a
20 debtor does not violate the Federal policy and does not
21 deprive the debtor of its power to seek bankruptcy
22 protection.

23 These come from a long line of decisions that it
24 is constitutionally permissible to restrain who can authority
25 corporate or entity bankruptcy filing. Now the Debtor tries

1 to distinguish these cases in its motion/reply, but, again,
2 neither line of authority is controlling.

3 Contrary to the arguments in the reply, the
4 Supreme Court case of International Shoe vs. Pinkus is not on
5 point and is not binding precedent. Pinkus involved an
6 Arkansas state insolvency scheme that essentially mirrored
7 the Bankruptcy Act then in effect. The Court found the
8 Arkansas law was preempted by the Bankruptcy Act and it did
9 essentially all the things that the Bankruptcy Act does -- it
10 provided for a discharge in a state insolvency scheme.

11 It did not involve a State Court issuing an
12 injunction from an individual from acting on behalf of an
13 entity or corporation. And the other cases cited by the
14 Debtor are just general statements of the law that aren't
15 necessarily binding precedent under these specific
16 circumstances.

17 And extending the logic of the Debtors reliance on
18 Pinkus and the other cases would mean that every State Court
19 receivership order that prohibits an individual from acting
20 on behalf of a corporation or entity or restricting them
21 would be preempted and void or just drop the case. Your
22 Honor, the Debtor also points out purported factual and legal
23 misapprehensions the Court made.

24 First, Your Honor, the Debtor points to the
25 January 26, 2016 order amending the original receivership

1 order that's giving Mr. Havens the ability to file
2 bankruptcy. If you string it together with the form
3 provisions, form language in the original receivership order.
4 But all that January 26th, 2016 order did was permit Mr.
5 Havens to act with the receivership entities in an
6 arbitration. It was specific and limited. It wasn't a broad
7 brand of power that would swallow the prior injunction.

8 Your Honor doesn't need to look any further than
9 the first few words of the operative language -- page of that
10 order. It starts with, "with regard to pending AAA
11 arbitration number," and it goes and it lists specific things
12 that can be done. It is very specific and limited to that
13 arbitration. It doesn't preempt or swallow everything else
14 that was set forth, you know, in the receivership order.

15 Your Honor, second the Debtor argues that the
16 bankruptcy is effectively prohibited under your reading of
17 the receivership order. But the Debtor fails to appreciate
18 the distinction between Skybridge's right to file bankruptcy
19 versus Mr. Haven's ability to authorize Skybridge to file the
20 bankruptcy. And the Court drew an appropriate line when it
21 made that distinction in its ruling.

22 And the distinction between whether the receiver
23 could file bankruptcy versus whether the receiver would is an
24 important one. First, the Debtor doubts whether the receiver
25 would file the bankruptcy because Skybridge is solvent. That

1 argument only proves the points we made in the motion to
2 dismiss for all the reasons. The other reasons that were set
3 forth in the motion for why we don't think this case should
4 be in Bankruptcy Court.

5 And we can't assume that the receiver as a
6 fiduciary would not file a bankruptcy petition if the
7 bankruptcy was in the best interest of the company. The
8 receiver's fiduciary is subject to the oversight of the
9 California Superior Court, and certainly mindful of the
10 obligation that she's undertaken. Mr. Miller can speak more
11 to that.

12 But all parties rights and remedies are preserved
13 in the existing State Court proceeding. There's nothing in
14 the Bankruptcy Code that's triggered that would protect
15 anyone other than putting Mr. Haven's in control. And the
16 only arguments he's made since the outset of the case for the
17 Chapter 11 is putting him in control and preventing the sale
18 of the licenses, but that's not enough should a State Court
19 decide. Mr. Haven has appealed those orders as rights are
20 preserved. The valid bankruptcy purpose for Chapter 11 is
21 simply disagreement with the Superior Court's decisions and
22 that's not enough.

23 The Debtor also made a point of questioning
24 whether the receiver would file a Chapter 11 reorganization.
25 It's debatable, but Your Honor knows reorganizations can

1 include orderly liquidations. If there were the case,
2 perhaps, the receiver might identify some sort of fraudulent
3 transfer, a preferential transfer that might trigger the duty
4 to put the entity in a Chapter 11, but that's just a
5 theoretical point right now. But the point being, Your
6 Honor, that we just simply can't assume that the receiver
7 would not do that.

8 Third, Your Honor, the Debtor also argues that
9 there was manifest injustice, and made the point in the
10 motion in the reply that the receiver was appointed *ex parte*.
11 The complaints about due process, Your Honor, in the Superior
12 Court proceeding are adequately preserved. Mr. Havens has
13 availed himself of that opportunity by appealing the Superior
14 Court decisions, but this Court has to respect those and it's
15 not set as a Federal omnibus equitable Court to remedy the
16 complaints about due process in State Courts.

17 Your Honor, you did not overlook the facts of the
18 law and there's been no manifest injustice. You considered
19 the scope of the injunction and Mr. Havens ability to file a
20 bankruptcy petition. You considered the Orchard Village case
21 on which the Debtor now relies and you distinguished that
22 line of authority. And you ruled that the petition was not
23 properly filed in the case and should be dismissed. Mr.
24 Haven's disagreement with that is for appeal, not for
25 reconsideration.

1 The procedural hurdles have not been overcome.
2 The only attempts being made here are attempts to relitigate
3 the issues. In any event, Your Honor, reconsideration would
4 not change the outcome. I'm not going to go into the merits.
5 I just want to remind the Court that parties seeking
6 reconsideration have to show that the correcting the factual
7 legal errors would actually change the result. And for all
8 the reasons we set forth in the motion to dismiss, we believe
9 the case would be dismissed in any event.

10 We believe it's a bad faith filing. It's a two-
11 party dispute. The U.S. Trustee mentioned that at the last
12 hearing. Skybridge it's insolvent, has not outside debt.
13 It's assets are valuable, has no owners debt, very few
14 creditors, millions of cash on hand and few expenses.

15 The purpose of the filing was to circumvent the
16 Superior Court's orders appointing the receiver and approving
17 a sale of certain licenses. Well, Mr. Havens has appealed
18 those orders. His reply admits he wasn't happy with the
19 speed in which those appeals are proceeding, so he had to
20 file a bankruptcy as litigation tactic to stop what he
21 perceives to be as detrimental actions by the receiver.

22 The last point that the Debtors' counsel made was
23 due process and that it wasn't given due process here, Your
24 Honor. As you, I think, mentioned at the last hearing the
25 authority to file a bankruptcy petition is a threshold issue.

1 The motion to dismiss was pending as Your Honor did grant it
2 on different grounds, but that was the purpose of the May
3 hearing. And reconsideration in any event wouldn't change
4 the outcome.

5 There's been no injustice or prejudice to Mr.
6 Havens here. There's already a procedure in place. He may
7 not like -- excuse me. Mr. Havens may not like what the
8 receiver is doing, but he has remedies. He can object to
9 sales. He can assert his interest in the Superior Court. He
10 can appeal. He has due process.

11 He hasn't identified a single thing to invoke
12 under the Bankruptcy Code other than displacing the receiver
13 and putting him back in control. And he shouldn't be allowed
14 to use Federal Bankruptcy Law to collaterally attack a valid
15 State Court order. And for those reasons, Your Honor, and
16 for the other reasons we may have set forth in our objection
17 we request that the Court deny the motion.

18 THE COURT: Thank you.

19 MR. MILLER: Good afternoon, Your Honor, for the
20 record Curtis Miller of Morris Nichols Arsht & Tunnel on
21 behalf of the receiver, Susan Uecker. I'll try and be brief.
22 I don't want to repeat what's in the papers or what's already
23 been said.

24 Just to address the first point that Mr. Allinson
25 made in his comments about a recent California Superior Court

1 hearing about the sale of the assets. This obviously wasn't
2 in any of his papers. I was able to communicate with my
3 California colleagues. And the order that was entered, and I
4 have a copy by my phone, but I don't have a copy to hand it
5 to you since we didn't have notice of it.

6 The order that was entered by that Court allows
7 expressly permits Ms. Uecker to market and propose the sale
8 of licenses. Expressly permits Ms. Uecker to go out and seek
9 extensions of the licenses that are under threat of being
10 lost. That's exactly what Ms. Uecker was appointed to do.

11 Nothing in that order, as Mr. Allinson points out,
12 says that she's prohibited from selling, prohibited from
13 doing anything. Ms. Uecker has to come back before the
14 Superior Court, get parties like Mr. Havens notice and
15 discuss with Mr. Leong and Mr. Havens any proposed sale.
16 That's what that order does.

17 But what Mr. Allinson does point out, Your Honor,
18 is that he has effective remedies. He believes he's getting
19 the relief that he wants in the Superior Court. So why he's
20 in front of this Court, Your Honor, is beyond me.

21 I'd also note, Your Honor, Mr. Keane pointed out a
22 number of different times, and I think we pointed out in our
23 papers, that a lot of what Mr. Havens is arguing about are
24 just really thinly disguised collateral attacks on the
25 Superior Court.

1 He has taken an appeal, but what is clear, Your
2 Honor, is that the Rooker-Feldman Doctrine prohibits any
3 Federal Court, other than the United State Supreme Court,
4 from reviewing State Court decisions. That he has taken an
5 appeal. That's his avenue for relief. He's not permitted to
6 come before Your Honor any District Court or anyone else to
7 try to overturn those rulings.

8 And then just briefly, Your Honor, on a couple of
9 points just to highlight, you know, things that were
10 mentioned in the replies. We, obviously, weren't able to
11 rebut them with a surreply is with respect to Mr. Havens'
12 complaints about being unable to have anyone else be
13 authorized to file a bankruptcy other than himself.

14 Your Honor, I would point out that under the
15 bylaws and the corporate charter that he attached in
16 connection with his motion, it expressly points out that Mr.
17 Havens' argument is incorrect. Under that charter, Mr.
18 Havens is the -- well under the bylaws, Mr. Havens is the
19 sole member. And it is a non-stock, non-profit corporation.

20 But the point that Your Honor made at the last
21 hearing is correct. Even with a non-stock corporation, it's
22 membership interest. And Mr. Havens has the ability to
23 transfer those membership interests to a third party. He has
24 the ability to do that under the charter, has the ability to
25 do that under the bylaws. And, Your Honor, he's just not

1 being frank with Your Honor when he says that he's prohibited
2 or no one else is permitted to be able to be a member of this
3 entity.

4 And I'd also note that Your Honor that he can do
5 this without violating the receivership orders injunction.
6 That injunction doesn't say anything about Mr. Havens
7 transferring his own membership interest to a third party.
8 Now whether or not as Your Honor noted at the last hearing
9 doing so simply to avail himself of a bankruptcy that is to
10 take advantage and collaterally attack a State Court is
11 legitimate, that's something to be decided at a later date.
12 But that injunction does not prohibit those specific types of
13 actions.

14 With respect to Mr. Havens' argument that the
15 receivership order expressly -- I mean the receivership order
16 prohibits any bankruptcy. I would just that, Your Honor, Mr.
17 Havens' papers on this point in his opening brief and in his
18 reply are inconsistent on this point.

19 In his opening brief, he notes that the
20 receivership order has a section dealing with Skybridge
21 filing for bankruptcy, dealing with any other receivership
22 entities filing for bankruptcy. That order expressly
23 contemplates that that is a possibility. But the order does,
24 as Your Honor noted at the last hearing, contain an
25 injunction against him personally from initiating actions on

1 behalf of the receivership entities.

2 With respect to his statement that the receiver
3 has a pecuniary interest against seeking a bankruptcy if that
4 were in the best interest of the receivership entities, I
5 just note that, Your Honor, there's obviously no evidence of
6 that. Ms. Uecker is a highly distinguished, very experienced
7 receiver, and she would do what was necessary to protect the
8 assets. But Mr. Havens has noted that these entities are
9 fully solvent, and there's no reason for them to be before
10 Your Honor.

11 Mr. Havens also attacks Ms. Uecker in his reply
12 and asserts that she is incurring all of these unnecessary
13 expenses. What I would point to, Your Honor, is that it's
14 his actions that are driving up the costs of the receivership
15 estate. He has taken innumerable actions in the Superior
16 Court before the FCC, before Your Honor obviously filing this
17 bankruptcy that require responses. He states a lot of
18 different things in each of these different tribunals that
19 require responses, requires the hiring of counsel.

20 And I'd also, Your Honor, that again Mr. Havens
21 and his counsel fail to note and disclose to Your Honor that
22 he has made these exact complaints to the Superior Court.
23 The receiver applied for compensation and for paying for her
24 professionals fees and expenses in the Superior Court after
25 Your Honor dismissed the bankruptcy case.

1 Mr. Havens objected. He objected to my firm's
2 fees. But what did the Superior Court do, it overruled those
3 objections, but he doesn't tell Your Honor this. He just
4 comes back and puts in a reply that all of these costs are
5 unnecessary. The receiver is unnecessarily driving up
6 expenses, even though they've been determined to be
7 reasonable by the Superior Court. Your Honor, we think
8 that's highly inappropriate for him to not disclose those
9 facts to Your Honor and to make those arguments in his reply.

10 With respect to the Milestone decision that he
11 focuses so much upon in his papers, Your Honor, I would note
12 that if Mr. Havens had bothered to KeyCite that decision, he
13 would have seen the two decisions which criticize and
14 distinguish milestones.

15 Now Mr. Havens argues that Milestone stands for
16 the proposition that a receiver cannot be authorized to file
17 a bankruptcy for, you know, an entity in which he or she is
18 appointed. But the two decisions that I would note for Your
19 Honor is one is Creative Holdings; it's at 2015 Middle
20 District of Florida decision, and Janitor Plumbing (sp),
21 which is a 1997 Northern District of Illinois decision. They
22 reject Milestone's assertion that it is just an unprecedented
23 act to have a receiver be able to file a bankruptcy.

24 And, indeed, in the Bayou Group bankruptcy case
25 and this is a decision by the Second Circuit Court of

1 Appeals. In the Bayou Group case, a receiver was appointed
2 as the sole member to take over the sole managing member
3 position of those entities. It was a Ponzi scheme and the
4 Court -- the State Court decided that it was appropriate to
5 have new governance come in.

6 The receiver was also an asset receiver. And
7 after determining that the best way to get assets back from
8 this Ponzi scheme was to file a bankruptcy. The receiver
9 filed a bankruptcy. In that case, the U.S. Trustee moved to
10 have a Chapter 11 Trustee appointed raising questions about
11 the appropriateness of a receiver remaining in, you know --
12 in position as the member.

13 But the Bankruptcy Court, the District Court, and
14 the Court of Appeals all rejected that argument and said that
15 the receiver could remain in position as the sole member, the
16 management member of those entities and allowed that
17 bankruptcy to go forward.

18 So, Your Honor, we submit that the unprecedented
19 statements in the or the statements about a bankruptcy being
20 unprecedented filed by a receiver in the Milestone case are
21 just incorrect.

22 Finally, Your Honor, I would just note that there
23 is no manifest injustice. That's the final sort of
24 alternative to get reconsideration. I think Mr. Keane, you
25 know, went through no error of law pretty soundly. But Mr.

1 Havens has relief available to him. He has taken advantage
2 of the ability to get that relief by taking appeals in the
3 California Appellate Courts. And we just don't think that
4 his attempts to collaterally attack those orders before Your
5 Honor are correct.

6 Now, finally, Your Honor, I did want to note and
7 just for clarification point that there are statements being
8 said about an appeal. But Your Honor did dismiss this
9 bankruptcy case under 305 and that has an impact on whether
10 or not there can be an appeal. So with that, Your Honor,
11 unless you have questions, I'll sit down.

12 THE COURT: No questions. Thank you.

13 MR. DRISCOLL: Good afternoon, Your Honor, for the
14 record Tom Driscoll from the Bifferato firm on behalf of
15 Puget Sound Energy.

16 Your Honor, my colleague Al Smith from Perkins
17 Coie is on the phone. I would request that Your Honor just
18 hear him briefly. We did file a joinder to Dr. Leon's
19 objection.

20 THE COURT: Okay.

21 MR. DRISCOLL: Thank you, Your Honor.

22 THE COURT: Mr. Smith.

23 MR. SMITH: Yes, thank you, Your Honor. Again,
24 extremely briefly, Your Honor.

25 Just to point out that Mr. Havens has made a lot

1 of allegations, a lot of arguments that a number of Courts
2 have gotten things wrong. And, Your Honor, he does have a
3 remedy for that including, frankly, the scope of the
4 receivership order if that's a problem for him here.

5 Everything is on appeal in California. That's
6 where it belongs. It ought to stay there. And there is
7 absolutely no reason to have a bankruptcy case, particularly
8 his bankruptcy case, pending in this Court. Thank you, Your
9 Honor.

10 THE COURT: Thank you.

11 Reply, Mr. Allinson.

12 MR. ALLINSON: Just very briefly, Your Honor.

13 First of all, I represent the Debtor, not Mr.
14 Havens. And I think that the reference is to Mr. Havens is
15 inappropriate. Second, the reason the Debtor is before this
16 Court is because it wants to reorganize, and it believes it
17 should be able to do so. There's no reason to liquidate this
18 Debtor.

19 Finally, what is highly inappropriate here is the
20 receiver using the assets of a non-profit to pay the private
21 expenses of for profit entities. It just reflects that she
22 does not seek to advance the best interest of Skybridge.

23 Finally, the Court did not make any reference at
24 the May 6th hearing to dismissal under Section 305. And
25 because there was no opportunity at that hearing to create an

1 evidentiary record, I would move the exhibits in Debtors'
2 binder into evidence.

3 Your Honor, these exhibits are -- except for the
4 last one -- simply what was appended to Debtors' motion and
5 its reply. The last one is a transcript from a June 30th
6 hearing in the California Superior Court about which there
7 was discussion today.

8 THE COURT: Any objection?

9 MR. MILLER: Your Honor, I don't have an objection
10 to most of them going in as exhibits, but some of them, I
11 think, are just documents that Your Honor would take judicial
12 notice. But, other than that, no objection.

13 THE COURT: All right.

14 MR. KEANE: No objection, Your Honor.

15 THE COURT: All right. They're admitted. That's
16 D1 through D14.

17 (Debtors' Exhibits D1 through 14, admitted)

18 THE COURT: And I agree that most of them are
19 transcripts and organizational documents that the Court could
20 take judicial notice of, but just so we're clear they're
21 being admitted.

22 MR. MILLER: Your Honor, just one request would be
23 that we be permitted to submit the order that was -- because
24 Mr. Havens -- I'm sorry. Mr. Allinson included this
25 transcript from June 30, 2016, which we didn't have notice

1 of. I would just like to submit the actual order that was
2 entered by the Superior Court.

3 THE COURT: Any objection?

4 MR. ALLINSON: No objection.

5 THE COURT: All right. It's admitted.

6 (Receiver's Exhibit Superior Court order, admitted)

7 MR. MILLER: Thank you.

8 THE COURT: You can provide a copy after the
9 hearing.

10 MR. MILLER: Thank you, Your Honor.

11 THE COURT: All right. We're going to take a
12 recess. I'll come out and rule.

13 (Recess taken at 12:08 p.m.)

14 (Proceedings resume at 12:24 p.m.)

15 (Call to order of the Court)

16 THE COURT: Please be seated.

17 All right. I'm ready to rule. Thank you much for
18 your presentations before the Court. Both your briefing and
19 oral argument were extremely helpful and professional.

20 So I am going to deny the motion and I'll say why.
21 Let me talk first about the legal standard governing the
22 motion for reconsideration.

23 I am not going to apply that legal standard. I'm
24 going to decide the issue on the merits as if this were the
25 initial hearing. I'm not going to put any procedural gloss

1 on the decision that sort of raises the degree of difficulty
2 for the Movant.

3 While I believe that my ruling comported with due
4 process and it was appropriate for the Court to decide the
5 threshold issue in the way it did, I will acknowledge that as
6 a practical -- not as a practical, but as a professional
7 matter it was probably unwise and, perhaps, inappropriate not
8 to allow briefing by the Debtor on the issue after I rendered
9 my decision. And that's why I am deciding the matter on its
10 merits without any procedural gloss of reconsideration
11 standards.

12 I believe that the very complete briefing on the
13 motion for reconsideration gave the Debtor and full and fair
14 opportunity to present its arguments on the merits. And I'm
15 going to decide it on the merits.

16 Also, I do not view this as a dismissal under 305,
17 which talks about abstention. I believe -- I don't remember
18 if I did that or not. But upon further consideration, I
19 don't think 305 is really applicable in this situation.
20 That's more of an abstention type of dismissal as opposed to
21 on the merits.

22 This is a dismissal based on lack of corporate
23 authority to file the petition for relief without corporate
24 authority by an appropriate person who has that exercise of a
25 -- human being that has the authority to take action to put

1 the Debtor, which is an entity, in bankruptcy. The case is
2 basically DOA. There's no corporate authority.

3 The decision about whether there is corporate
4 authority is really a mixed question of law and fact. And,
5 as such, I believe would be appealable to the District Court.
6 Whether or not, of course, the Debtor wishes to take that
7 action is up to the Debtor. But I don't believe it is a 305
8 non-appealability situation.

9 So dealing with the merits, I really liked the
10 way, I think it was Dr. Leong put it in his papers. I'm
11 looking for the exact quote, but, in effect, this idea that
12 this Court does not act as a sort of super Chancery Court to
13 correct the wrongs of State Courts throughout the land. This
14 Court is very much a Court of limited jurisdiction like all
15 Federal Courts. And definitely even more limited in its
16 jurisdictional mandate and authority than even a District
17 Court, which has a much broader jurisdiction.

18 My job is to interpret and enforce the Bankruptcy
19 Laws and not to fix complaints about procedural unfairness in
20 State Courts that don't directly impact what's going on in
21 Federal Court. The fact that Mr. Havens is dissatisfied with
22 actions and, perhaps, even notice that he's received in the
23 State Court in connection with the receivership action is
24 really a matter of no moment for this Court. The proper
25 place to address those issues lies with the State of

1 California Superior Court, both the Trial Court and whatever
2 appeal rights Mr. Havens would have in that Court.

3 Similarly, and I've ruled this before for example
4 a fight amongst shareholders of a Delaware Corporation as to
5 who properly has elected a board, and this came up in the SS
6 Body Armor case, is not subject to the automatic stay. And
7 the Court is abstained from deciding those issues and sent
8 people back to where they belong, which is Chancery Court.,
9 because the question of the exercise of shareholders rights
10 and how that impacts corporate governance is not an issue for
11 this Court.

12 So at heart here we have an argument about whether
13 Mr. Havens has the authority to exercise -- has the ability
14 to exercise his authority as the sole member of the
15 corporation, non-profit corporation, non-stock corporation,
16 as the sole member and as the director or manager of that
17 corporation.

18 At heart, I believe the only legitimate argument
19 is whether the State Court injunction against Mr. Havens
20 exercising his authority under the corporate documents as a
21 practical matter results in the Debtor being unable to
22 exercise its constitutional right to bankruptcy.

23 And let's be clear here to the extent that they
24 received the receiver order or any order would enjoin a
25 corporation from filing bankruptcy, it would be void as a

1 matter of federal public policy regarding the constitutional
2 ability and right to exercise access to the bankruptcy
3 system.

4 So the receiver order in California purports to
5 enjoin Mr. Havens from exercising control over the Debtor,
6 from interfering with the management of the Debtor, and
7 enjoining the Debtor from filing bankruptcy. That latter
8 piece is unenforceable. But because one aspect of a Court
9 order is unenforceable or unconstitutional doesn't make the
10 order as a whole unenforceable or unconstitutional. And
11 certain provisions of an order can be valid while other
12 provisions of an order are invalid.

13 So then the question is did the California Court
14 have the authority to enjoin Mr. Havens, and clearly it did.
15 Mr. Havens is not filing bankruptcy so his access, his
16 personal access to the bankruptcy system is not implicated.

17 The other question is as a practical matter does
18 the injunction against Mr. Havens result in an injunction
19 against the Debtor, because clearly there is a separation in
20 the law between the Debtor and Mr. Havens. And all things
21 being equal, ignoring the practicalities of this particular
22 situation, I believe there is no question that a State Court
23 has the ability to enjoin a person such as Mr. Havens from
24 taking actions on behalf of a corporation without triggering
25 any constitutional infirmities. Whether that's a foreign

1 receivership Court as opposed to a home Court or home
2 documents or Chancery is neither here nor there.

3 In this case, Mr. Havens has chosen to take
4 actions that are beyond the limit of his authority -- or
5 excuse me -- that are not beyond the limit of his authority.
6 He has chosen to take actions -- chosen not to take actions,
7 I apologize, that he would have the authority to take, which
8 would erase any practical effect of denying the Debtor access
9 to the bankruptcy system.

10 Mr. Havens has under the organizing documents the
11 authority to appoint members other than himself as directors
12 or managers of the company. Mr. Havens has the authority to
13 transfer ownership, the sole membership interest in the
14 corporation to another entity. Those entities would not be -
15 - those persons or entities would not be enjoined by the
16 State Court receivership order from filing -- having the
17 Debtor file bankruptcy.

18 Whether or not that action, at this point, based
19 on these facts might constitute bad faith, which would as a
20 separate issue result in the Debtors' case being dismissed
21 for being a bad faith filing is separate from the technical
22 issue, and I think importantly the clear issue under State
23 law, giving Mr. Havens the authority to act.

24 This isn't an issue about whether actions are in
25 bad faith or not in bad faith. This isn't an issue that was

1 -- the issues that were briefed that we were getting ready to
2 hear on May 6th as to sort of the merits of the actions and
3 how they interact with the standards generally governing
4 dismissal. This is a technical, but important technical
5 issue of corporate authority.

6 Whether exercise of certain actions might
7 subsequently and separately give rise to claims of bad faith
8 are neither here nor there with the technical issue of
9 whether or not Mr. Havens has this authority without him
10 being enjoined, because he's been enjoined from exercising
11 it.

12 So I don't believe, even though some of the
13 hypotheticals I posited like an involuntary filing, for
14 example, were incorrect as a matter of law. Because of the
15 charitable nature of this corporation, I don't believe and
16 don't buy into the argument that there is a, as a matter of
17 practicality, truly an injunction against this corporation
18 filing bankruptcy.

19 Mr. Havens has taken actions that result in that
20 being the status. But those are his decisions. I don't know
21 why he did that. I don't know why he didn't do it. Those
22 are issues of personal motivation. And the effects, at this
23 point, based on what's going on today, the facts on the
24 ground on July 11th, whether exercise of those authority at
25 this point would be proper or not, in the context of whether

1 it would be in bad faith or not that might result as
2 dismissal of the case for a different reason, is separate
3 from the issue of whether or not he had the ability to take
4 those actions in the first place.

5 Also I don't believe that the injunction against
6 Mr. Havens interfering with the management of the Debtor
7 would prevent him from exercising that authority. I don't
8 make a ruling on that specifically because that factual
9 scenario is not in front of me.

10 Again, I think that that's a separate issue,
11 perhaps an issue of public policy that might be more to the
12 extent it could be argued as preventing those type of
13 actions. And to the extent that became a dispute, it might
14 be an appropriate dispute for Chancery Court or this Court, I
15 take no position on that.

16 The facts on the ground are clear that the
17 argument there is a practical injunction against the Debtor
18 being a bankruptcy entity is incorrect.

19 So I could go through the various items in the
20 pleadings, but I don't think it's really necessary. I just
21 generally reject the Debtors' arguments. I think the real
22 argument I've already dealt with was this practical argument.
23 I don't think, and I believe the case's rulings, otherwise,
24 are either just incorrect or distinguishable.

25 But I am completely comfortable and believe there

1 are cases that support the proposition that there is a
2 difference between who has the authority to file the
3 documents putting their company in bankruptcy and the
4 company's ability to be in bankruptcy. I don't believe as a
5 matter of law that an injunction against a person filing or
6 authorizing the filing of bankruptcy of an entity is the same
7 thing as preventing the entity from filing that bankruptcy.

8 The La Coras (sp) out of California is on all
9 fours and clearly is in tune with what I believe the proper
10 law is. There are other cases on different facts that
11 arguably go the other way or, at least, dicta in those cases
12 go the other way. But I choose to follow the cases that
13 support the distinction between enjoining the actions of a
14 Debtor and enjoining the actions of individuals as they
15 attempt to exercise control over a debtor. I think that's a
16 critical distinction. And to the extent my decision is
17 inconsistent with other cases, I reject those cases where
18 they're clearly distinguishable.

19 I don't believe that Supreme Court law is
20 implicated in this decision. The decision about whether how
21 local law controls, who can file, I think the Debtors'
22 interpretation of local law being limited to the law
23 governing Delaware corporations and the general corporation
24 law as a limited liability law, et cetera, under Delaware
25 State law, I think is too narrow.

1 That case does not say state corporate governance
2 law. It does not in any way limit itself. It doesn't even
3 implicate state law. It says local law. I read local law to
4 mean non-federal law governing corporations. It might also
5 include federal law as well to the extent there's a valid
6 injunction.

7 But I think the focus is -- let me restate that.
8 I think local law means non-bankruptcy law. Here, local law
9 includes state law governance issues that would normally be
10 decided under Delaware law and would include the exercise by
11 a State Court in California, a fill-in Court, as Debtors'
12 counsel describes it, entering a receivership order enjoining
13 Mr. Havens from exercising the authority to put the Debtor in
14 bankruptcy. So I think the decision I made and in making
15 today on the merits is wholly consistent with the Supreme
16 Court law.

17 With regard to the argument that there somehow is
18 authority under the arbitration provision, specifically
19 paragraph 27.2, permitting Mr. Havens to litigate on behalf
20 of the receivership entities and the arbitration provision,
21 and paragraph 9.4 of the arbitration agreement, which permits
22 the parties to seek injunctive and equitable relief, somehow
23 gives Mr. Havens the authority, under that exception to the
24 receivership order, to file bankruptcy would indeed be a
25 situation where the exception would be swallowing the whole.

1 I think that authority is clearly limited to the
2 ability to act in furtherance of the arbitration. And so,
3 for example, what it would allow is if the receiver were to
4 sue under something that was subject to the arbitration
5 provision in State Court in Utah. Mr. Havens would have the
6 authority to seek equitable relief in that State Court to
7 enforce the arbitration provision. That doesn't mean that he
8 has the authority to file bankruptcy on behalf of the Debtor.

9 I'm just checking my notes.

10 With regard to alleged infirmities about what's
11 going on in the State Court in California with regard to
12 payment of fees by the receiver, actions to sell or not sell
13 licenses, action to try to renew licenses, whether the order
14 appointing the receiver was truly ex parte or was it plenary
15 or, excuse me, or a limited proceeding as opposed to a full
16 evidentiary record. Those are issues for State Court in
17 California and are not issues that this Court has the ability
18 or would exercise the ability, even if I had it, to
19 administer. Those are State Court issues.

20 Okay. I think that covers fairly the arguments
21 that were made in front of the Court in the papers and at
22 argument. As I said, I believe the practical effect is not
23 what is argued by the Debtor. I think that, frankly, was the
24 Debtors' strongest argument that I rejected.

25 I choose to file the cases that draw this

1 distinction like the case in La Coras. I think Judge
2 Shannon's opinion or, excuse me, ruling -- I always get the
3 name wrong -- Farris, I believe, is applicable. I don't
4 think it's distinguishable along the names -- yeah Farris
5 Minor Holdings. I don't think it's distinguishable along the
6 lines urged by the Debtor.

7 So the Court will enter an order denying the
8 motion for reconsideration for the reasons set forth at the
9 hearing.

10 Anything else for today?

11 MR. ALLINSON: Your Honor, Debtor would orally
12 move at this time for the issuance of the Court's order
13 pending appeal.

14 THE COURT: I'll deny that. I don't think -- I
15 think your appellate rights are preserved, and I don't think
16 it's appropriate to, in effect, give Mr. Havens the authority
17 to have put this case in bankruptcy pending a decision on
18 appeal that could take months to come down. So I'll deny
19 that motion.

20 MR. ALLINSON: I have a form of order denying the
21 oral motion. May I present it to the Court?

22 THE COURT: Yes. You can -- I'll have a look at
23 it, see if it's appropriate.

24 MR. ALLINSON: May I approach?

25 THE COURT: Yes.

1 MR. ALLINSON: The comment is that it should
2 include for the reasons set forth on the record.

3 THE COURT: Oh this is the stay pending appeal
4 order.

5 MR. ALLINSON: Yes.

6 THE COURT: Okay.

7 MR. KEANE: Your Honor, Peter Keane, for the
8 record. Just to close the loop, will Your Honor be entering
9 that order to deny the motion to reconsider or deny the
10 Debtors' motion or do you need us to -- the parties to submit
11 one?

12 THE COURT: No, I'm going to issue an order
13 denying the motion for reconsideration for the reasons set
14 forth on the record at the hearing. And after I do that,
15 I'll enter this order.

16 And I've interlineated it to say for the reasons
17 set forth on the record.

18 MR. ALLINSON: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 All right. We're adjourned.

21 MR. ALLINSON: Thank you, Your Honor.

22 (Court Adjourned)
23
24
25

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajackowski
Mary Zajackowski, CET**D-531

July 11, 2016
Date

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
Skybridge Spectrum Foundation,	:	Case No. 16-10626(CSS)
	:	
	:	
Debtor.	:	Related to Docket No: 124
	:	

ORDER

Upon consideration of the Debtor's Motion for Reconsideration of Order Dismissing Case [Docket No.: 124] filed on May 20, 2016 (the "Motion"), the Court having reviewed the Motion and the objections thereto; the Court having heard evidence and the statements of counsel regarding the Motion at a hearing before the Court on July 11, 2016 (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (iii) notice of the Motion and the Hearing were sufficient notice under the circumstances; and (iv) the Court has judicial power to enter a final order.

IT IS HEREBY ORDERED THAT, for the reasons set forth on the record at the Hearing, the Motion is Denied.



Christopher S. Sontchi
United States Bankruptcy Court Judge

Dated: July 11, 2016

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10078037	Department of the Treasury	Internal Revenue Service	P.O. Box 7346 Philadelphia, PA 19101-7346
10073907	Drinker Biddle & Reath LLP	1500 K Street, N.W., Ste. 1100	Washington, DC 20005-1209
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TOTAL: 63

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
Skybridge Spectrum Foundation,¹) Case No. 16-10626 (CSS)
)
Debtor.) Hearing Date: July 8, 2016 at 2:00 p.m.

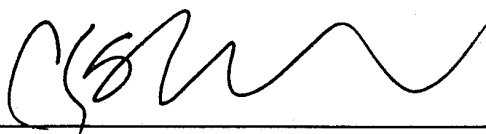
**ORDER DENYING DEBTOR'S MOTION FOR STAY
PENDING APPEAL OF ORDER DISMISSING CASE**

This matter having been opened to the Court by Skybridge Spectrum Foundation, debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"); and upon the oral motion (the "Stay Motion") pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure, for a stay (the "Stay") pending appeal (the "Appeal") of the *Order Dismissing Case* (Docket No. 120) (the "Dismissal Order"), entered on May 6, 2016; and this Court having considered the Stay Motion; and after due deliberation thereon, it is hereby

ORDERED that the Stay Motion seeking stay pending appeal is **DENIED**.

for the reasons
set forth
on the record.

Dated: July 11, 2016



The Honorable Christopher S. Sontchi
United States Bankruptcy Judge

¹ The last four digits of the Debtor's federal tax identification number are 8487. The Debtor's mailing address is 2509 Stuart Street, Berkeley, CA 94705.